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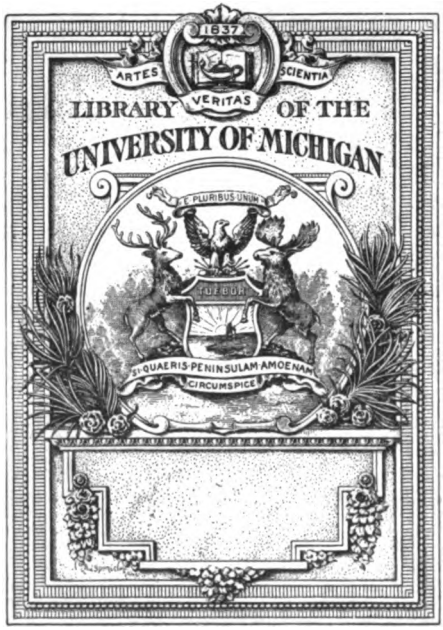

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60TH CONGRESS : : 2D SESSION

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60TH CONGRESS, 2d Session } HOUSE OF REPRESENTATIVES { DOCUMENT No. 1484

LAWS, ORDINANCES, DECREES, AND MILITARY ORDERS HAVING THE FORCE OF LAW, EFFECTIVE IN PORTO RICO, MAY 1, 1900

LETTER FROM THE SECRETARY OF WAR TRANSMITTING, IN RESPONSE TO THE INQUIRY OF THE HOUSE OF REPRESENTATIVES, LAWS AND ORDINANCES OF AND MILITARY ORDERS AND DECREES AFFECTING PORTO RICO

PART 2

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ARRANGEMENT.

PART I.

Civil Code.
Code of Civil Procedure.

PART II.

Penal Code.
Law of Criminal Procedure.
Code of Commerce.
Mortgage law.
Regulations for execution of mortgage law.

PART III.

Instructions for drafting public documents.
Compilation of the organic provisions for the administration of justice.
Laws relating to public works.
Law of railroads.
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Provincial and municipal laws.
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Levy and collection of taxes and customs duties.
Customs tariff and regulations.
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By-laws and charter of the Spanish Bank of Porto Rico.
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PART IV.

Rules and instructions to carry into effect the executive orders relating to the military government by the United States.
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[a] Orders of the Cuban military government pertaining wholly to the island of Cuba are omitted from this compilation.

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TRANSLATION OF THE PENAL CODE IN FORCE IN CUBA AND PORTO RICO.

WAR DEPARTMENT,
DIVISION OF CUSTOMS AND INSULAR AFFAIRS.
JULY, 1900.

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ROYAL DECREE.

Upon the recommendation of the Colonial Secretary, with the advice and consent of the Council of Secretaries, and by virtue of the authority vested in my Government by article 89 of the Constitution of the Monarchy,

I hereby decree the following:

ART. 1. The amended Penal Code of June 17, 1870, shall be published and go into effect from the date of its publication in the territory within the jurisdiction of the islands of Cuba [a] and Porto Rico, with the amendments recommended by the commission which has had charge of this work.

ART. 2. In the same manner there shall be published and observed in the islands referred to in the foregoing article the provisional law of criminal procedure for the application of said Code, with the changes recommended by the said commission.

ART. 3. The Government shall inform the Cortes of this decree and of the modified laws which are applied thereby to the colonial provinces.

Given at the palace on May 23, 1879.

ALFONSO.
SALVADOR DE ALBACETE,
Colonial Secretary.

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[a] So much as refers exclusively to Cuba has been omitted.

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PENAL CODE.

Book I.—GENERAL PROVISIONS REGARDING CRIMES AND MISDEMEANORS, THE PERSONS LIABLE, AND THE PENALTIES.

TITLE I.—CRIMES AND MISDEMEANORS, AND CIRCUMSTANCES WHICH EXEMPT FROM, EXTENUATE, OR AGGRAVATE CRIMINAL LIABILITY.

CHAPTER I.—*Crimes and misdemeanors.*

ART. 1. Crimes or misdemeanors are voluntary acts and omissions punished by law.

Acts and omissions punished by law are always presumed to be voluntary unless the contrary shall appear.

Any person voluntarily committing a crime or misdemeanor shall incur criminal liability, even though the wrongful act committed be different from that which he had intended to commit.

ART. 2. In case a court should have knowledge of any act which it considers proper to repress and which is not punished by law, it shall abstain from any proceedings in the matter, and shall state to the Government the reasons which induce it to believe that the act should be the object of penal legislation.

The court shall apply to the Government in the same manner, stating what may be proper, without prejudice to immediately imposing sentence, when a strict application of the provisions of the code would result in an excessive penalty, taking into consideration the degree of malice and the injury caused by the crime.

ART. 3. Not only is a consummated crime punishable, but also a frustrated crime and an attempt.

A crime is frustrated when the guilty person performs all of the acts of execution which should produce the crime as their consequence, but nevertheless do not constitute it by reason of causes independent of the will of the perpetrator.

There is an attempt when the guilty person makes a beginning in the commission of a crime directly by overt acts, and does not perform all of the acts of execution which should produce the crime by reason of some cause or accident other than his own voluntary desistance.

ART. 4. A conspiracy and proposition to commit a crime are punishable only in the cases in which the law specifically penalizes them.

There is a conspiracy when two or more persons act together for the commission of a crime and decide to commit it.

There is a proposition when the person who has decided to commit a crime proposes its execution to one or more persons.

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ART. 5. Misdemeanors are punishable only when they have been consummated.

Exception is made of frustrated misdemeanors against persons or property.

ART. 6. Crimes are considered "grave" which the law punishes by penalties which in any of their degrees are corporal.

Crimes are considered "less grave" which the law represses by penalties which in their maximum degree are correctional.

Misdemeanors are infractions for which the law establishes light penalties.

ART. 7. Crimes which are punished by special laws are not subject to the provisions of this code.

CHAPTER II.—*Circumstances which exempt from criminal liability.*

ART. 8. The following are not delinquent and are therefore exempt from criminal liability:

1. An imbecile or lunatic, except when the latter has acted during a lucid interval.

When the imbecile or lunatic may have committed an act which the law defines as a "grave crime" the court shall order his confinement in one of the asylums established for persons thus afflicted, which he shall not be permitted to leave without the previous authorization of the same court.

If the act committed by the imbecile or lunatic is defined by the law as a "less grave crime" the court, according to the attendant circumstances, shall proceed in accordance with the provisions contained in the foregoing paragraph or turn over the imbecile or lunatic to his family, if the latter give sufficient security for his custody.

2. A person under 9 years of age.

3. A person over 9 years of age and under 15, unless he has acted with the exercise of judgment.

The court shall make an express declaration with regard to this point in imposing a penalty or in declaring said person irresponsible.

When the minor is declared irresponsible, in accordance with the provisions of this and of the preceding number, he shall be delivered to his family with a charge to guard and educate him. In the absence of a person to guard and educate him he shall be taken to a charitable institution for the education of orphans and foundlings, and he shall not leave said institution except at the time and under the conditions prescribed for its inmates.

4. He who acts in defense of his person or rights, provided there are the following attendant circumstances:

(1) Illegal aggression.

(2) Reasonable necessity of the means employed to prevent or repel it.

(3) Lack of sufficient provocation on the part of the person defending himself.

5. He who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural, or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by consanguinity within the fourth civil degree, provided the first and second circumstances mentioned in the foregoing number are attendant,

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and provided that in case the party attacked first gave provocation, the defender took no part therein.

6. A slave acting in defense of his master, and a gratuitously emancipated freedman in that of his patron, and either when acting in defense of the spouses, ascendants, descendants, or brothers or sisters of the said master or patron, provided that in any of these cases the first and second circumstances mentioned in No. 4 of this article are attendant, and that in case there was provocation on the part of the party attacked the defender took no part therein.

7. He who acts in defense of the person or rights of a stranger, provided the first and second circumstances mentioned in No. 4 are attendant, and that the defender is not actuated by revenge, resentment, or other illegal motive.

8. He who in order to avoid an injury performs an act that causes damage to another's property, provided the following circumstances are attendant:

(1) Should the injury sought to be avoided really exist.

(2) Should it be greater than that caused to avoid it.

(3) Should there be no other practicable and less injurious means to prevent it.

9. He who while performing a legal act with due care causes some injury by mere accident without liability or intention of causing it.

10. He who acts by compulsion of an irresistible force.

11. He who acts under the impulse of an uncontrollable fear of an equal or greater injury.

12. He who acts in the fulfillment of a duty or in the legitimate exercise of a right, trade, or office.

13. He who acts by virtue of obedience due another.

14. He who is guilty of an act of omission, being prevented by legitimate or insuperable causes.

CHAPTER III.—*Circumstances which extenuate criminal liability.*

ART. 9. The following are extenuating circumstances:

1. Those mentioned in the preceding chapter, when all the requisites necessary to exempt from criminal liability in the respective cases are not attendant.

2. When the culprit is under 18 years of age.

3. When the delinquent had no intention of committing so grave an injury as that which he inflicted.

4. When sufficient provocation or threat on the part of the injured party immediately preceded the act.

5. When the act was committed in the immediate vindication of a grave offense committed against the author of the crime, his spouse, ascendants, descendants, his legitimate, natural, or adopted brothers or sisters, or relatives by affinity in the same degrees.

6. When the act was committed in a state of intoxication, if the latter were not habitual or subsequent to the plan to commit the crime.

The courts shall decide in view of the circumstances of the persons and of the acts when intoxication is to be considered habitual.

7. When the person has acted under such powerful excitement as would naturally produce entire loss of reason and self-control.

8. And, finally, any other circumstance of a similar nature and analogous to the foregoing ones.

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CHAPTER IV.—*Circumstances which aggravate criminal liability.*

ART. 10. The following are aggravating circumstances:

1. When the injured person is the spouse or ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degrees of the offender.

2. When the injured person is the master or patron of the offender, or the spouse, ascendant, descendant, or legitimate brother or sister of the same.

3. When the act is committed with treachery.

There is treachery when the culprit commits any crime against persons employing means, methods, or forms in the execution thereof which tend to directly and specially insure it without risk to the person of the criminal arising from the defense the injured party might make.

4. When the crime is committed in consideration of a price, reward, or promise.

5. When it is committed by means of inundation, fire, poison, explosion, stranding of a vessel or intentional damage, derailment of a locomotive, or by the use of any other artifice involving great destruction.

6. When the crime is committed by means of printing, lithography, photography, or other similar means facilitating publicity.

Courts shall take this circumstance into consideration, qualifying it as aggravating or extenuating, according to the nature and effects of the crime.

7. When the evil accomplished by the crime is deliberately increased by causing other evils unnecessary for its execution.

8. When the act is committed with evident premeditation.

9. When craft, fraud, or disguise is employed.

10. When advantage is taken of superior strength or means are employed to weaken the defense.

11. When the act is committed with abuse of confidence.

12. When advantage is taken by the culprit of his public position.

13. When means are employed or circumstances brought about which add ignominy to the natural effects of the act.

14. When the crime is committed on the occasion of a fire, shipwreck, or other calamity or misfortune.

15. When the crime is committed with the assistance of armed persons, or of persons who assure or provide immunity.

16. When it is committed at night, or in an uninhabited place or by a gang.

The court shall take this circumstance into consideration according to the nature and characteristics of the crime.

17. When the crime is committed in contempt of or with insult to the public authority.

18. When the culprit has been previously punished for a crime for which the law fixes an equal or greater penalty, or for two or more crimes for which it fixes a lighter penalty.

This circumstance shall be taken into consideration by the courts according to the circumstances of the delinquent and the nature and effects of the crime.

19. When he is a recidivist.

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A recidivist is the culprit who being found guilty of one crime should have been sentenced for another crime included in the same title of the code.

20. When the crime is committed in a sacred place, in the palace of the Governor-General, or in the presence of the latter, or where public authorities are engaged in the discharge of their duties.

21. When the act is committed with insult or in disregard for the respect which may be due the aggrieved party on account of his rank, age, or sex, or when it is committed in his dwelling if he has not given provocation.

22. When the act is committed against a white person by one who is not white.

This circumstance shall be taken into consideration by courts according to the nature and characteristics of the crime.

23. When the act is committed by wrongful entry.[a]

Wrongful entry is such as is effected through any way not intended for the purpose.

24. When it is committed by breaking through a wall, roof, or floor, or by forcing doors or windows.

25. When the culprit is a vagrant.

By a vagrant is understood a person who possesses no property or income, does not habitually exercise any profession, art, or trade, and has no employment, office, industry, lawful occupation, or any other legitimate or known means of earning a livelihood, even though he may be married and have a fixed domicile.

26. When the act is committed by the use of arms prohibited by the regulations.

TITLE II.—PERSONS LIABLE FOR CRIMES AND MISDEMEANORS.

CHAPTER I.—*Persons criminally liable for crimes and misdemeanors.*

ART. 11. The following are criminally liable for crimes:

1. Principals.
2. Accomplices.
3. Accessories.

The following are criminally liable for misdemeanors:

1. Principals.
2. Accomplices.

ART. 12. The following are considered principals:

1. Those who take a direct part in the execution of the act.
2. Those who directly force or induce others to execute it.
3. Those who cooperate in the execution of the act by another act without which it could not have been accomplished.

ART. 13. Accomplices are those persons who, not being included in the preceding article, cooperate in the execution of the act by other previous or simultaneous acts.

ART. 14. Accessories are those who, having knowledge of the commission of the crime, and without having participated therein either as principal or accomplices, subsequently take part in its execution in any of the following manners:

1. By themselves making profit or by assisting the delinquents to profit by the effects of the crime.

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[a] See art. 526, No. 1.

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2. By concealing or rendering useless the body, effects, or instruments of the crime in order to prevent its discovery.

3. By harboring, concealing, or assisting in the escape of the culprit, provided any of the following circumstances are attendant:

(1) When the accessory takes advantage of any public office he may be holding.

(2) When the delinquent is guilty of treason, regicide, parricide, assassination, attempt against the life of the Governor-General, or known to be an habitual criminal in any other crime.

ART. 15. Those who are accessories of their spouses, ascendants, descendants, legitimate, natural, or adopted brothers or sisters, or relatives by affinity in the same degrees, are exempt from the penalties imposed upon accessories; also slaves and freedmen with regard to their masters and patrons or the spouses or other relatives of the latter in the degrees mentioned, with the only exception of such accessories as may be included in No. 1 of the preceding article.

CHAPTER II.—*Persons civilly liable for crimes and misdemeanors.*

ART. 16. Every person criminally liable for a crime or misdemeanor is also civilly liable.

ART. 17. The exemption from criminal liability declared in Nos. 1, 2, 3, 8, and 11 of article 8 does not include exemption from civil liability, which shall be enforced subject to the following rules:

(1) In cases 1, 2, and 3, the persons who are civilly liable for acts committed by a lunatic or imbecile, or a person under 9 years of age, or over this age and under 15, who has not acted with the exercise of judgment, are those who have them under their authority, legal guardianship, or power, unless they prove that there was no blame or negligence on their part.

Should there be no person having them under his authority, legal guardianship, or power, or if such person be insolvent, the said lunatics, imbeciles, or minors shall answer with their own property, excepting that part which is exempted for their support in accordance with the civil law.

(2) In the case of No. 7, those persons are civilly liable from whom the injury was warded off in proportion to the benefit they may have derived.

The court shall fix, according to its judgment, the proportional amount for which each interested party shall be liable.

When the respective amounts can not be equitably apportioned, even approximately, or when the liability extends to the State or the greater part of a town, and in any case, if the damage were caused with the assent of the authorities or their agents, indemnity shall be made in the manner prescribed by special laws and regulations.

(3) In the case of No. 11, those who caused the fear shall be principally liable, and subsidiarily, in the absence of the former, those who committed the act, reserving with regard to the latter the benefit of competency.

ART. 18. Innkeepers, tavern keepers, and any other persons or enterprises shall be civilly liable, in the absence of persons criminally so, for crimes committed within their establishments, whenever any infraction of general or special police regulations by them or their employees may have occurred.

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Innkeepers are furthermore subsidiarily liable for the restitution of effects robbed or stolen within their houses from persons who are stopping therein, or for the indemnification of said goods, provided the persons have notified in advance either the innkeeper himself, or the person representing him, of the deposit of said effects in the inn; and provided furthermore, that they have heeded the warnings that said innkeepers or their substitutes may have given them with regard to the care and vigilance of their effects. There shall be no liability in case of robbery by violence or intimidation of persons, except it be committed by the employees of the inn.

ART. 19. The subsidiary liability established in the preceding article shall also apply to masters, teachers, persons, and enterprises engaged in any kind of industry, for crimes and misdemeanors committed by their slaves, pupils, officers, apprentices, or employees in the discharge of their obligations or service.

TITLE III.—PENALTIES.

CHAPTER I.—*Penalties in general.*

ART. 20. No crime or misdemeanor shall be punished by a penalty which was not established by law prior to its commission.

ART. 21. Penal laws shall have a retroactive effect in so far as they favor the person guilty of a crime or misdemeanor, even though at the time of the publication of said laws a final sentence should have been pronounced and the convicted person is serving his sentence.

ART. 22. The pardon of the offended party does not extinguish a penal action. This is not understood with regard to crimes which can not be prosecuted without the previous denunciation or consent of the injured party.

Civil liability with regard to the interests of the party condoning an offense is extinguished by his express renunciation.

ART. 23. The following shall not be considered as penalties:

1. Detention and temporary confinement of the accused persons.
2. Suspension from public employment or office ordered during proceedings, or in order to institute them.
3. Fines and other corrections which, in the use of their administrative or disciplinary powers, superiors may impose upon their subordinates or upon those under their direction.
4. Deprivation of rights and reparations, which the civil laws may establish in penal form.

CHAPTER II.—*Classification of penalties.*

ART. 24. The penalties which may be imposed according to this code, and their different classes, are those included in the following general scale:

Corporal penalties.—Death; *cadena perpetua; reclusión perpetua; relegación perpetua;* perpetual expulsion; *cadena temporal; reclusión temporal; relegación temporal;* temporary expulsion; *presidio mayor; prisión mayor; confinamiento;*[a] perpetual absolute disquali-

[a] See G. O. No. 104, headquarters Department of Porto Rico, July 19, 1899, paragraph III.

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fication; temporary absolute disqualification; perpetual special disqualification from public office, the right of suffrage, active and passive, and from the exercise of a profession or trade; temporary special disqualification from a public office, the right of suffrage, both active and passive, and from the exercise of a profession or trade.

Correctional penalties.—Presidio correccional; prisión correccional; banishment; public censure; suspension from public office, active and passive right of suffrage, and from the exercise of a profession or trade; *arresto mayor.*

Light penalties.—Arresto menor; private censure.

Penalties common to the three preceding classes.—Fine; caution.

Accessory penalties.—Degradation; civil interdiction; subjection to the surveillance of the authorities; forfeiture or confiscation of the instruments and proceeds of the crime; payment of costs.

ART. 25. A fine, when imposed as the principal penalty, shall be considered as a corporal penalty if it exceeds 6,250 pesetas; as correctional if it does not exceed 6,250 and is not less than 325 pesetas, and light if it does not amount to 325 pesetas.

ART. 26. The penalties of disqualification and suspension from public office and the right of suffrage are accessory in those cases when, not being specially imposed by law, it declares that other penalties shall include them.

Costs of proceedings are understood to be imposed by law upon those criminally liable for any crime or misdemeanor.

CHAPTER III.—*Duration and effect of penalties.*

SECTION I.—*Duration of penalties.*[a]

ART. 27. Persons condemned to *cadena, reclusión,* and *relegación perpetuas,* or to perpetual expulsion, shall be pardoned after having served thirty years of their sentence, unless on account of their conduct or for other serious reasons they shall not be worthy of pardon in the opinion of the Government.

The penalties of *cadena, reclusión, and relegación temporales,* and temporary expulsion, shall last for twelve years and one day to twenty years.

Those of *presidio* and *prisión mayores* and *confinamiento* shall last from six years and one day to twelve years.[b]

Those of temporary absolute and temporary special disqualification shall last from six years and one day to twelve years.

Those of *presidio correccional* and *prisión correccional* shall last from six months and one day to six years.

That of suspension shall last from one month and one day to six years.

That of *arresto mayor* shall last from one month and one day to six months.

That of *arresto menor* shall last from one to thirty days.

That of caution shall last for the time the court may determine.

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[a] See G. O. No. 33, headquarters Department Porto Rico, March 13, 1899, as to commutation for good behavior.

[b] G. O. No. 152, headquarters Department Porto Rico, Sept. 29, 1899.

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ART. 28. The provisions of the preceeding article shall not apply to penalties imposed as accessory to others, in which case the accessory penalties shall have the duration respectively fixed by law.

ART. 29. When the guilty person is imprisoned, the duration of the temporary penalties shall commence from the day on which the condemnatory sentence was made final.

When the guilty person may not be imprisoned, the duration of penalties consisting in deprivation of liberty shall commence as soon as said person is at the disposal of the judicial authorities, in order to serve his sentence.

The duration of the penalties of expulsion, *confinamiento*, and banishment shall commence only from the day on which the guilty person commenced to serve his sentence.

If the guilty person should enter an appeal and it is refused, he shall not be allowed the time that has elapsed between the sentence appealed from and the one rejecting the appeal.

SECTION II.—*Effects of penalties according to their respective nature.*

ART. 30. The penalty of perpetual absolute disqualification shall produce the following effects:

1. The deprivation of the person punished of all honors which he may be enjoying, and of all public employments and offices which he may be holding, even though the latter come from popular election.

2. The deprivation of the rights to vote and to be elected to public offices of popular election.

3. The disqualification to acquire the honors, offices, employments and rights mentioned.

4. The loss of all right to retirement with pay, suspension with part pay, or any other pension for offices he may have previously filled, without prejudice to the pension for support the Government may grant him as a reward for distinguished services.

Under this provision are not included rights already acquired at the time of the condemnation by the widow or children of the person punished.

ART. 31. The penalty of temporary absolute disqualification shall produce the following effects:

1. The deprivation of the person sentenced of all honors he may be enjoying, and of all public employment and offices which he may be holding, although the latter be filled by popular election.

2. The deprivation of the right of voting and being elected to public office by popular election during the term of the sentence.

3. The disqualification of acquiring the honors, employments, offices, and rights mentioned in No. 1, likewise during the term of the sentence.

ART. 32. Perpetual special disqualification from public office shall produce the following effects:

1. The loss of the office or employment which it affects, and of the honors attached thereto.

2. Disqualification to acquire other similar ones.

ART. 33. Perpetual special disqualification from the right of suffrage shall perpetually deprive the person punished of the right to vote and being elected to the elective public office in question.

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ART. 34. Temporary special disqualification for a public office shall produce the following effects:

1. Loss of the office or employment which it affects, as well as the honors attached thereto.

2. Disqualification to acquire other similar offices or employments during the term of the sentence.

ART. 35. Temporary special disqualification from the right of suffrage shall deprive the person punished of the right of voting and being elected during the term of sentence for the popular elective office affected by the sentence.

ART. 36. Suspension from a public office shall disqualify the person punished from exercising the same, and from obtaining other similar offices during the term of the sentence.

ART. 37. Suspension from the right of suffrage shall likewise disqualify the person for the exercise thereof during the term of the sentence.

ART. 38. When an ecclesiastical person is sentenced to the penalty of disqualification in any of its classes, or to that of suspension, the effects thereof shall be limited respectively to the offices, rights, or honors which he does not derive from the church, and to the salary to which he is entitled by reason of his ecclesiastical office.

ART. 39. Perpetual special disqualification for a profession or trade shall perpetually deprive the person punished of the privilege to exercise the same.

Temporary disqualification therefor shall deprive him in the same manner during the term of the sentence.

ART. 40. Suspension from the exercise of a profession or trade shall produce the same effect as temporary disqualification during the term of the sentence.

ART. 41. Civil interdiction shall deprive the person punished as long as he suffers it, of the rights of paternal authority, guardianship of person or property, participation in the family council, marital authority, the administration of property, and the right to dispose of his own property by acts *inter vivos*. Those cases are excepted in which the law explicity limits its effects.

ART. 42. Subjection to the surveillance of the authorities imposes the following obligations on the persons punished:

1. That of fixing his domicile and giving notice thereof to the authority immediately in charge of his surveillance, not being allowed to change it without the knowledge and permission of said authority in writing.

2. To observe the rules of inspection prescribed.

3. To adopt some trade, art, industry, or profession, should he not have known means of subsistence of his own.

Whenever a person punished is placed under the surveillance of the authorities notice thereof shall be given to the Government and to the Governor-General.

ART. 43. The penalty of caution shall oblige the person punished to secure a sufficient bondsman, who shall guarantee that said person will not commit the injury which it is endeavored to prevent, otherwise binding himself to pay the sum which the court may have fixed in the sentence.

The court shall fix the term of the bond in its discretion.

If the person punished should not furnish bond, he shall incur the penalty of banishment.

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ART. 44. Persons sentenced to the penalties of disqualification for public offices, for the right of suffrage, or for a profession or trade, perpetually or temporarily, may be rehabilitated in the form prescribed by law.

ART. 45. A pardon shall not produce rehabilitation for the discharge of public office and for the exercise of the right of suffrage, unless said rehabilitation be specially granted in the pardon.

ART. 46. Costs shall include fees and indemnifications incurred in judicial proceedings, whether consisting of fixed or unalterable amounts, by reason of being previously fixed by laws, regulations, or royal orders, or not fixed by any schedule.

ART. 47. The amount of fees and indemnifications not previously fixed in the terms prescribed in the preceding article shall be fixed by the court in the manner established by the law of criminal procedure.

ART. 48. In case the property of the person punished should not be sufficient to cover all the pecuniary liabilities, they shall be satisfied in the following order:

1. Reparation of the injury caused and indemnification of damages.
2. Indemnification to the State for the amount of stamped paper and other expenses which may have been incurred on his account in the cause.
3. The costs of the private accuser.
4. Other costs of procedure, including those of the defense of the person prosecuted, without preference among the persons interested.
5. The fine.

Should the crime have been of those which can be prosecuted only at the instance of a party, the costs of the private accuser shall be satisfied in preference to the indemnification to the State.

ART. 49. If the person sentenced should not have property to satisfy the pecuniary liabilities included in Nos. 1, 3, and 5 of the preceding article, he shall be subject to a subsidiary personal liability at the rate of one day for every 12½ pesetas, according to the following rules:

1. If the principal penalty imposed is to be undergone by the criminal confined in a penal institution, he shall continue therein, although said detention can not exceed one-third of the term of the sentence, and in no case can it exceed one year.
2. If the principal penalty imposed is not to be undergone by the criminal in a penal institution and its duration is fixed, he shall continue subject, for the time mentioned in the preceding article, to the same deprivations of which said penalty must consist.
3. If the principal penalty imposed should be a censure, fine, or caution, the insolvent guilty person shall be confined in the district jail for a term which can not exceed six months in any case, should he have been prosecuted for a crime, or fifteen days should he have been prosecuted for a misdemeanor.

ART. 50. The subsidiary personal liability on account of insolvency shall not be imposed upon the person condemned to a penalty higher in the general scale than that of *presidio correccional.*

ART. 51. The personal liability which the criminal may have incurred by reason of insolvency shall not exempt him from the reparation of the injury caused and indemnification of damages if his pecuniary circumstances should improve, but it shall exempt him from the other pecuniary liabilities included in numbers 3 and 5 of article 48.

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SECTION III.—*Punishments which include other accessory penalties.*

ART. 52. The death penalty, when it is not carried out because the criminal has been pardoned, shall include perpetual absolute disqualification and subjection of the criminal to the surveillance of the authorities for the term of his life, unless said accessory penalty has been specially remitted in the pardon.

ART. 53. The penalty of *cadena perpetua* shall include the following accessory penalties:

1. Degradation, in case the principal penalty of *cadena perpetua* is imposed upon a public official by reason of abuse committed in the exercise of his office, if said office is one of those which confer a permanent character.

2. Civil interdiction.

3. Subjection to the surveillance of the authorities during the life of the person punished.

Even though the latter should obtain pardon from the principal penalty, he shall suffer that of perpetual absolute disqualification and subjection to the surveillance of the authorities during his life, unless this accessory penalty has been remitted in the pardon of the principal one.

ART. 54. The penalties of *reclusión perpetua*, *relegación perpetua*, and perpetual expulsion shall include that of perpetual absolute disqualification and subjection to the surveillance of the authorities during the life of the person punished, said accessory penalties being suffered by the latter even though he may have been pardoned as to the principal one, if they have not been remitted in the pardon.

ART. 55. The penalty of *cadena temporal* shall include the following accessory penalties:

1. Civil interdiction of the person punished during the term of the sentence.

2. Perpetual absolute disqualification.

3. Subjection to the surveillance of the authorities during the life of the person punished.

ART. 56. The penalty of *presidio mayor* shall include those of absolute temporary disqualification and subjection to the surveillance of the authorities for a term equal to that of the principal punishment, which shall begin to be counted from the date of the fulfillment of the same.

ART. 57. The penalty of *presidio correccional* shall include suspension from any public office, profession, trade, or from the right of suffrage.

ART. 58. The penalties of *reclusión temporal*, *relegación temporal*, and temporary expulsion shall include temporary absolute disqualification during their term and subjection to the surveillance of the authorities during the term of the sentence and as long again, which shall be counted from the time the sentence is fulfilled.

ART. 59. The penalty of *confinamiento* shall include that of temporary absolute disqualification and subjection to the surveillance of the authorities during the term of the sentence and as much again, which shall begin to be counted from the completion of the former.

ART. 60. The penalties of *prisión mayor* and *prisión correccional* and *arresto mayor* shall include suspension from any office and from the right of suffrage during the term of the sentence.

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ART. 61. Every penalty which may be imposed for a crime shall include the forfeiture of the proceeds of the crime and of the instruments used in its execution.

Both shall be confiscated unless they belong to a third party who is not responsible for the crime.

Things thus confiscated shall be sold if they are of licit commerce, the proceeds thereof being applied to cover the liabilities of the person punished, or shall be rendered useless if they are illicit.

CHAPTER IV.—*The application of penalties.*

SECTION I.—*Rules for the application of penalties to principals in a consummated crime, frustrated crime, and attempt, and to accomplices and accessories thereto.*

ART. 62. Upon the principals in a crime or misdemeanor the penalty shall be imposed which may have been prescribed by the law for said crime or misdemeanor.

Whenever the law shall establish the penalty for a crime in general terms it shall be understood as being imposed upon the consummated crime.

ART. 63. In cases in which the crime committed is different from that which the culprit had intended to commit the following rules shall be observed:

1. If the penalty prescribed for the accomplished crime should be higher than that corresponding to the crime which the culprit had intended to commit, the penalty corresponding to the second shall be imposed on the culprit in its maximum degree.

2. If the penalty prescribed for the accomplished crime should be lower than that prescribed for the one which the culprit had intended to commit, the penalty corresponding to the former shall be imposed on him, also in its maximum degree.

3. The provisions of the preceding rule shall not be applicable if the acts committed by the culprit should constitute, besides, an attempt to commit another crime or another frustrated crime, if the law should punish these acts with a higher penalty, in which case that corresponding to the attempt or frustrated crime shall be imposed in its maximum degree.

ART. 64. Upon the principals in a frustrated crime shall be imposed the penalty next lower in degree than that prescribed by the law for the consummated crime.

The same rule shall be observed regarding the principals in frustrated misdemeanors.

ART. 65. Upon the principals in an attempt to commit a crime shall be imposed a penalty lower by two degrees than that prescribed by law for the consummated crime.

ART. 66. Upon the accomplices in a consummated crime shall be imposed the penalty next lower in degree than that prescribed by law for the consummated crime.

ART. 67. Upon the accessories in a consummated crime shall be imposed the penalty lower by two degrees than that prescribed by law for the consummated crime.

ART. 68. Upon the accomplices in a frustrated crime shall be imposed the penalty next lower in degree than that prescribed by law for the frustrated crime.

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ART. 69. Upon the accessories in a frustrated crime shall be imposed the penalty lower by two degrees than that prescribed by law for the frustrated crime.

ART. 70. Upon the accomplices in an attempt to commit a crime shall be imposed the penalty next lower in degree than that prescribed by law for the attempt to commit the crime.

ART. 71. Upon the accessories in an attempt to commit a crime shall be imposed the penalty lower by two degrees than that prescribed by law for the attempt to commit the crime.

ART. 72. There are excepted from the provisions of articles 67, 69, and 71 the accomplices mentioned in No. 3 of article 14, in whose cases the first circumstance mentioned in said number is attendant, upon whom the penalty of perpetual special disqualification shall be imposed if the delinquent harbored should have been guilty of a grave crime, and that of temporary special disqualification if he should have been guilty of a less grave crime.

ART. 73. The general provisions contained in articles 64 to 72, inclusive, shall not be applicable to cases in which the frustrated crime, the attempt, the complicity, or the participation after the fact (*encubrimiento*) are specially penalized by law.

ART. 74. In order to graduate the penalties which, in accordance with the provisions of articles 64 to 72, inclusive, should be imposed on the principals in a frustrated crime and in an attempt to commit crime, and upon the accomplices and accessories, the following rules shall be observed:

1. When the penalty prescribed for the crime is a single and indivisible one, the penalty next lower shall be that following in number the indivisible penalty in the respective graduated scale.

2. When the penalty prescribed for the crime is composed of two indivisible penalties, or of one or more divisible penalties imposed to their full limit, the penalty next lower shall be that which follows in number the lesser of the penalties imposed in the respective graduated scale.

3. When the penalty prescribed for the crime is composed of one or two indivisible penalties and the maximum degree of another divisible penalty, the penalty next lower shall consist of the medium and minimum degrees of the said divisible penalty and the maximum degree of that following in number in the respective graduated scale.

4. When the penalty prescribed for the crime is composed of various degrees, corresponding to several divisible penalties, that next lower shall consist of the degree that follows the minimum of those constituting the penalty imposed, and of the two others next immediate, which will be taken from the penalty imposed, if it should have any, and otherwise from the penalty following in number in the respective graduated scale.

5. When the law prescribes the penalty for the crime in a form not specially mentioned in the four preceding rules, the courts, proceeding by analogy, shall impose the penalties corresponding to principals, accomplices, and accessories in a frustrated crime and in an attempt to commit a crime.

ART. 75. When the penalty prescribed by law for a crime should have been included in two scales, the graduation prescribed in the preceding article shall be made according to the scale which includes

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the penalties by which are punished the greater part of the crimes referred to in the section, chapter, or title in which the crime is contained.

Demonstrative table of the provisions of this chapter.

Penalty prescribed for the crime.	Penalty pertaining to the principal in a frustrated crime and the accomplice in a consummated crime.	Penalty pertaining to the principal in an attempt at consummated crime, accessory in the same crime, and accomplices in a frustrated crime.	Penalty pertaining to an accessory in a frustrated crime and accomplices in attempt.	Penalty pertaining to an accessory in an attempt to commit a crime.
First case, death....	*Cadena perpetua*..	*Cadena temporal*....	*Presidio mayor*....	*Presidio correccional.*
Second case, *cadena perpetua* to death.	*Cadena temporal*..	*Presidio mayor*.....	*Presidio correccional.*	*Arresto mayor.*
Third case, *cadena temporal* in its maximum degree to death.	*Presidio mayor* in its maximum degree to *cadena temporal* in its medium degree.	*Presidio correccional* in its maximum degree to *presidio mayor* in its medium degree.	*Arresto mayor* in its maximum degree to *presidio correccional* in its medium degree.	Fine and *arresto mayor* in its minimum and medium degrees.
Fourth case, *presidio mayor* in its maximum degree to *cadena temporal* in its medium degree.	*Presidio correccional* in its maximum degree to *presidio mayor* in its medium degree.	*Arresto mayor* in its maximum dedree to *presidio correccional* in its medium degree.	Fine and *arresto mayor* in its minimum and medium degrees.	Fine.

SECTION II.—*Rules for the application of penalties with regard to extenuating and aggravating circumstances.*

ART. 76. Extenuating or aggravating circumstances shall be taken into consideration in reducing or increasing the penalty in the cases and in accordance with the rules prescribed in this section.

ART. 77. Aggravating circumstances which in themselves constitute a crime specially punished by law, or which the law has mentioned in describing and penalizing it, shall not have the effect of increasing a penalty.

Nor shall this effect be produced by aggravating circumstances that are inherent in such manner to the crime that without the attendance thereof the crime could not be committed.

ART. 78. The aggravating or extenuating circumstances that consist in the moral condition of the delinquent in his private relations with the injured party, or in any other personal cause, shall serve to aggravate or diminish the liability of only the principals, accomplices, or accessories who may be affected thereby.

The circumstances which consist in the material execution of the deed or in the means employed to accomplish it shall serve to aggravate or diminish the liability of those persons only who were acquainted with them at the moment of the commission of the crime or of their cooperation therein.

ART. 79. In cases in which the law prescribes only one indivisible penalty the courts shall apply it without consideration of the aggravating or extenuating circumstances attending the deed.

In cases in which the law prescribes a punishment composed of two indivisible penalties the following rules shall be observed in the application thereof:

1. If an aggravating circumstance alone should have attended the deed, the higher penalty shall be applied.

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2. If neither extenuating nor aggravating circumstances should have attended the deed the lesser penalty shall be applied.

3. If an extenuating circumstance and no aggravating one should have attended the deed the lesser penalty shall be applied.

4. If both aggravating and extenuating circumstances should have attended the deed the courts shall make reasonable allowance therefor, with regard to their number or importance, in applying the penalty in accordance with the foregoing rules, according to the result produced by such allowance.

ART. 80. In cases in which the penalty prescribed by law contains three degrees, whether it be a single divisible penalty or composed of three different penalties, each of which forms a degree, in accordance with the provisions of articles 95 and 96, the courts shall observe for the application of the penalty the following rules, according as to whether there are or not extenuating or aggravating circumstances:

1. If neither aggravating nor extenuating circumstances should have attended the deed they shall impose the penalty prescribed by law in its medium degree.

2. If only an extenuating circumstance should have attended the deed they shall impose the penalty in its minimum degree.

3. If only an aggravating circumstance should have attended the deed they shall impose the penalty in its maximum degree.

4. If both extenuating and aggravating circumstances should have attended the deed they shall make a reasonable allowance in the designation of the penalty by counterbalancing the weight of the one and the other.

5. If two or more very marked extenuating circumstances and no aggravating circumstances should have attended the act the court shall impose the penalty next lower to that prescribed by the law, in the degree that it considers proper, according to the number and importance of such circumstances.

6. Whatever may be the number and importance of the aggravating circumstances, the courts shall not impose a higher penalty than that prescribed by law in its maximum degree.

7. Within the limits of each degree the courts shall determine the extent of the penalty, in view of the number and importance of the aggravating and extenuating circumstances and the greater or lesser extent of the evil produced by the crime.

ART. 81. In those cases in which the penalty prescribed by law is not composed of three degrees the courts shall apply the rules contained in the foregoing article, dividing into three equal periods the term embraced in the penalty imposed, forming one degree of each of the three periods.

ART. 82. In the application of fines the courts may go to the full limit within which the law permits their imposition, taking into consideration, in order to determine their amount in each case, not only the aggravating and extenuating circumstances of the act, but chiefly the wealth or means of the culprit.

ART. 83. If all the conditions necessary to exempt from liability in the case of No. 9 of article 8 should not be attendant, the provisions of article 590 shall be observed.

ART. 84. Upon a person under 15 but over 9 years of age, who is not exempt from liability by reason of the court having declared

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that he acted with the exercise of judgment, a discretionary penalty shall be imposed, but always lower by two degrees at least than that prescribed by law for the crime which he committed.

Upon a person over 15 and under 18 years of age the penalty shall always be imposed in the proper degree which is next lower than that prescribed by law.

ART. 85. A penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed were not wholly excusable by reason of the lack of some of the conditions required to exempt from criminal liability in the respective cases mentioned in article 8, provided that the greater number thereof be attendant, the penalty being imposed in the degree the courts may consider proper, taking into consideration the number and importance of the requisites absent or present.

This provision is understood without prejudice to that contained in article 83.

SECTION III.—*Provisions common to the two preceding sections.*

ART. 86. Upon a person guilty of two or more crimes or misdemeanors shall be imposed all the penalties corresponding to the various violations of the law, to be simultaneously served if possible, in view of the nature and effects of such penalties.

ART. 87. If all or any of the penalties corresponding to the various violations of the law could not be simultaneously served by the person condemned, the following rules shall be observed with regard thereto:

1. In the imposition of the penalties, the order of their respective severity shall be observed for their successive fulfillment, so far as possible, by the person condemned by reason of having obtained pardon for, or served out, those first imposed.

For the observance of the provisions of the preceding paragraph, the respective severity of the penalties shall be determined in accordance with the following scale: Death, *cadena perpetua*, *cadena temporal*, *reclusión perpetua*, *reclusión temporal*, *presidio mayor*, *prisión mayor*, *presidio correccional*, *prisión correccional*, *arresto mayor*, *relegación perpetua*, *relegación temporal*, perpetual expulsion, temporary expulsion, *confinamiento*, banishment.

2. Notwithstanding the provisions contained in the preceding rule, the maximum duration of the sentence of the culprit shall not exceed three times the time which the most severe of the penalties that he may have incurred should have imposed on him; and there shall not be imposed on him other proper penalties when those already imposed shall have covered the maximum of the aforementioned term.

In no case shall such maximum term exceed forty years.

For the application of the provisions of this rule, the duration of a perpetual penalty shall be reckoned at thirty years.

ART. 88. The provisions of the foregoing article are not applicable to a case in which a single act should constitute two or more crimes, or if one of them should be a necessary means for committing the others.

In such cases, only the penalty corresponding to the more serious crime shall be imposed in its maximum degree.

ART. 89. Whenever the courts should impose a penalty that includes other punishments by provision of law, according to the prescriptions

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of Section III of the preceding chapter, they shall also specifically sentence the culprit to the said penalties.

ART. 90. In cases for which the law prescribes a penalty lower or higher by one or two degrees than another given penalty, the rules prescribed in articles 74 and 75 shall be observed in graduating it.

The lower or higher penalty shall be taken from the graduated scale in which the given penalty may be included.

If a penalty higher than that of *arresto mayor* is to be applied, it shall be taken from the scale including the penalties prescribed for the graver crimes of the same character as that punished with *arresto mayor*.

The courts shall bear in mind, in making application of a lower or higher penalty, the following graduated scales:

Scale No. 1.—(1) Death, (2) *cadena perpetua*, (3) *cadena temporal*, (4) *presidio mayor*, (5) *presidio correccional*, (6) *arresto*.

Scale No. 2.—(1) Death, (2) *reclusión perpetua*, (3) *reclusión temporal*, (4) *prisión mayor*, (5) *prisión correccional*, (6) *arresto*.

Scale No. 3.—(1) *Relegación perpetua*, (2) *relegación temporal*, (3) *confinamiento*, (4) banishment, (5) public censure, (6) caution.

Scale No. 4.—(1) Perpetual expulsion, (2) temporary expulsion, (3) *confinamiento*, (4) banishment, (5) public censure, (6) caution.

Scale No. 5.—(1) Perpetual absolute disqualification, (2) temporary absolute disqualification, (3) suspension from public office, right of suffrage, active and passive, profession or trade.

Scale No. 6.—(1) Perpetual special disqualification, (2) temporary special disqualification, or (3) suspension from public office, right of suffrage, active and passive, profession and trade.

ART. 91. The fine shall be considered as the last penalty in every one of the preceding graduated scales.

If it should be imposed in this character, the subsidiary liability corresponding thereto by reason of the insolvency of the culprit, established in article 49, can not exceed the duration of the term pertaining to the penalty immediately higher in the respective scale.

ART. 92. In cases to which the law prescribes a penalty higher than another determined penalty, without specifically designating what it may be, if there should be no higher penalty in the respective scale, or if the former should be that of death, the following shall be considered as penalties immediately higher:

1. If the penalty determined were that of *cadena* or *reclusión perpetua*, or perpetual, absolute, or special disqualification, the same penalties, with the proviso that the condemned person shall not enjoy the benefit established in article 27 of this code until the completion of forty years.

2. If it should be that of *relegación perpetua*, the penalty of *reclusión perpetua*.

3. If it should be that of perpetual expulsion, the next higher penalty shall be that of *relegación perpetua*.

ART. 93. Whenever it may be necessary to increase or reduce the penalty of fine by one or more degrees, it shall be increased or reduced respectively for each degree by the fourth part of the maximum amount prescribed by law, and in order to reduce it the reverse operation shall take place.

The same rules shall be observed with regard to fines that do not consist of a fixed amount, but of a proportional amount.

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ART. 94. When women shall commit crimes which this code punishes with the penalties of *cadena perpetua* or *cadena temporal*, or with those of *presidio mayor* or *presidio correccional*, there shall be respectively imposed upon them those of *reclusión perpetua* or *reclusión temporal*, *prisión mayor* or *prisión correccional*.

ART. 95. In the divisible penalties the legal term of duration is understood as distributed into three parts, forming the three degrees; that is, the minimum, medium, and maximum, in the manner shown in the following:

Table showing the duration of divisible penalties and the time which each one of their degrees embraces.

Penalties.	Time included by the penalty in its entirety.	Time included in its minimum degree.	Time included in its medium degree.	Time included in its maximum degree.
Temporary *cadena*, *reclusión*, *relegación*, expulsion.	From 12 years and 1 day to 20 years.	From 12 years and 1 day to 14 years and 8 months.	From 14 years, 8 months, and 1 day, to 17 years and 4 months.	From 17 years, 4 months, and 1 day to 20 years.
Presidio and *prisión mayor*, *confinamiento*, temporary, absolute, or special disqualification.	From 6 years and 1 day to 12 years.	From 6 years and 1 day to 8 years.	From 8 years and 1 day to 10 years.	From 10 years and 1 day to 12 years.
Presidio and *prisión correccional*, and banishment.	From 6 months and 1 day to 6 years.	From 6 months and 1 day to 2 years and 4 months.	From 2 years, 4 months, and 1 day, to 4 years and 2 months.	From 4 years, 2 months, and 1 day to 6 years.
Suspension.....	From 1 month and 1 day to 6 years.	From 1 month and 1 day to 2 years.	From 2 years and 1 day to 4 years.	From 4 years and 1 day to 6 years.
Arresto mayor.....	From 1 month and 1 day to 6 months.	From 1 to 2 months.	From 2 months and 1 day to 4 months.	From 4 months and 1 day to 6 months.
Arresto menor.....	From 1 to 30 days.	From 1 to 10 days.	From 11 to 20 days..	From 21 to 30 days.

ART. 96. In cases in which the law prescribes a penalty composed of three distinct penalties, each one shall form a degree; the lightest of them the minimum, the next the medium, and the most severe the maximum degree.

Whenever the penalty prescribed does not have one of the forms specially provided for in this book, the degrees shall be distributed by applying by analogy the rules fixed.

CHAPTER V.—*Execution of penalties and their fulfillment.*

SECTION I.—*General provisions.*

ART. 97. No penalty shall be executed unless by virtue of final sentence.

ART. 98. Nor shall any penalty be executed in any other form than that prescribed by law, or with any other circumstances or incidents than those mentioned in its text.

Besides the provisions of the law, the prescriptions of the special regulations for the management of the institutions in which the penalties are to be undergone shall also be observed with regard to the character, time, and other circumstances of the labors, the relations of the convicts among themselves and with other persons, the relief they may receive, and their diet.

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The regulations shall provide for the separation of the sexes in different institutions, or at least in different departments.

ART. 99. If a delinquent should become insane or an imbecile after final sentence should have been pronounced upon him, the execution thereof shall be suspended only with regard to the personal penalty, the provisions of the second and third paragraphs of No. 1 of article 8 being observed in the respective cases.

At any time when the delinquent shall recover his reason he shall complete his sentence, unless the penalty should have prescribed in accordance with the provisions of this code.

The proper provisions of this section shall also be observed if the insanity or imbecility should occur while the convict is undergoing his sentence.

SECTION II.—*Principal penalties.*

ART. 100. The penalty of death shall be executed by the garrote upon a scaffold.

The execution shall take place twenty-four hours after the notification of sentence, by day, in public, and in the place generally set aside for the purpose, or in the one the court may determine, when there are especial reasons therefor.

This penalty shall not be carried out upon religious or national holidays.

ART. 101. Until there shall be a place provided in the jails for the public execution of the death penalty, the person sentenced thereto, who shall be dressed in a black cassock, shall be taken to the scaffold in the carriage provided for that purpose, or in a cart in the absence of the former.

ART. 102. The corpse of the person executed shall be exposed on the scaffold for four hours, after which it shall be buried; being delivered to his relatives or friends for this purpose if they should solicit it. The funeral must be held without display.

ART. 103. The penalty of death shall not be inflicted upon a woman while she is pregnant; nor shall she be notified of the sentence that has been imposed upon her until forty days after her delivery.

ART. 104. The penalties of *cadena perpetua* and *cadena temporal* shall be served in any of the places provided for such purpose, to the exclusion of the islands of Cuba and Porto Rico.

ART. 105.[a] Those sentenced to *cadena temporal* or *cadena perpetua* shall labor for the benefit of the State; they shall always carry a chain at the ankle, hanging from the waist; they shall be employed in hard and painful labor and shall receive no assistance whatsoever from without the institutions.

Nevertheless, if the court, taking into consideration the age, health, condition, or any other personal circumstance of the delinquent, should believe that he should undergo his penalty in labors within the institution, it shall so declare in the sentence.

ART. 106. Those sentenced to *cadena temporal* or *cadena perpetua* can not be assigned to private works or to public works that are executed by business enterprise or by contracts with the Government.

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[a] See G. O. No. 33, Headquarters Department of Porto Rico, March 13, 1899.

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ART. 107. A person condemned to *cadena temporal* or *cadena perpetua* who should have attained the age of 60 years before the passing of sentence, shall serve his sentence at a prison for serving the penalty of *presidio mayor*.

If he should attain said age while undergoing his sentence, he shall be transferred to the latter penal institution, in which he shall remain for the time prescribed in the sentence.

ART. 108. *Reclusión perpetua* and *reclusión temporal* shall be served in institutions within or without the islands of Cuba and Porto Rico.

Those condemned thereto shall be subject to forced labor for the benefit of the State within the precincts of the institution.

ART. 109. The penalties of *relegación perpetua* and *relegación temporal* shall be served without the islands of Cuba and Porto Rico, at the places provided therefor by the Government.

Those undergoing this sentence may devote themselves freely, under the surveillance of the authorities, to their profession or trade within the radius to which the limits of the penal institution extend.

ART. 110. A person sentenced to expulsion shall be expelled from Spanish territory forever, if the sentence were perpetual, and for the term of the sentence if temporary.

ART. 111. The penalties of *presidio* shall be served in the institutions provided therefor, which are situated, those for *presidio mayor* within the islands of Cuba and Porto Rico and adjacent islands, and for *presidio correccional* within the islands of Cuba and Porto Rico respectively.

Those sentenced to *presidio* shall be subject to forced labor within the institution in which they are serving their sentence.

ART. 112. The product of the labor of those condemned to *presidio* shall be devoted:

1. To meet the civil liabilities of the prisoners arising from their crimes.
2. To indemnify the institution for the expenses they may occasion.
3. To provide them with some advantage or savings during their detention, should they deserve it, and to create a reserve fund, to be delivered to them upon their discharge from the *presidio*, or to their heirs should they die there.

ART. 113. The penalties of *prisión* shall be served at the institution provided for this purpose, which will be situated, those for *prisión mayor* within the islands of Cuba and Porto Rico and adjacent islands, and those for *prisión correccional* within the territorial jurisdiction of the audiencia (court) which imposed the sentence.

Those condemned to *prisión* shall not go outside of the institution in which they are undergoing their punishment, during the term of their sentence, and shall engage, for their own benefit, in such works as they may choose, provided they be compatible with the discipline established by the regulations. They shall be, nevertheless, subject to the labors of the institution until they shall have met their liabilities mentioned in Nos. 1 and 2 of the preceding article. Those having no trade or known and honest means of livelihood shall be also subject thereto.

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ART. 114.[a] Those sentenced to *confinamiento* shall be taken to a town or district situated in the adjacent islands, where they shall remain at complete liberty, under the surveillance of the authorities.

The courts, in designating the place where this penalty is to be served, shall take into consideration the trade, profession, or means of livelihood of the condemned person, in order that he may earn his living.

Those who, by reason of their age, health, and good conduct, should be fit for military service, may be, with their consent, assigned thereto by the Government.

Those sentenced to banishment shall be precluded from entering the place or places designated in the sentence or within the radius therein designated, which shall include a distance of 25 kilometers at least and 250 kilometers at most from the place designated.

ART. 115. The person sentenced to public censure shall receive it in person at a sitting of the court, with open doors.

The person sentenced to private censure shall receive it in person at a sitting of the court and in the presence of the secretary, behind closed doors.

ART. 116. *Arresto mayor* shall be served in the public building provided for the purpose in the seats of judicial districts.

The provisions contained in the second paragraph of article 113 are applicable in their respective cases to those condemned to this penalty.

ART. 117. *Arresto menor* shall be served at the town halls or other public buildings, or in the house of the culprit himself, if the sentence shall so declare, without his being allowed to leave the same during the entire period of the sentence.

Apprentices, serfs (*colonos*), and slaves shall suffer the penalty at the house of their master, patron, or owner on the same terms as those expressed in the preceding paragraph.

SECTION III.—*Accessory penalties.*

ART. 118. A person sentenced to degradation shall, at a public sitting of the court, be stripped by a bailiff of his uniform, robes of office, insignia, and decorations.

The stripping off shall be carried out at the command of the presiding judge, who shall order it, in the following manner: "Strip (*the name of the person sentenced*) of his insignia and decorations, to wear which the law declares him unworthy. The law degrades him because he has degraded himself."

TITLE IV.—CIVIL LIABILITY.

ART. 119. The civil liability established in Chapter II, Title II, of this book includes: (1) Restitution, (2) reparation for the damage caused, (3) indemnification for losses, (4) enforced manumission.

ART. 120. The restitution of the thing itself must be made, if possible, with payment for deteriorations or diminutions of value, to be appraised by the court.

Restitution shall be made, even though the thing may be in the possession of a third person who had acquired it in a legal manner, reserving, however, his action against the proper person.

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[a] See G. O. No. 152, headquarters Department of Porto Rico, Sept. 20, 1899.

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This provision is not applicable to a case in which the third person has acquired the thing in the manner and with the requisites established by law to make it unrecoverable.

ART. 121. The reparation shall be made by the appraisal of the amount of damage by the court, taking into consideration the value of the thing whenever possible, and the value as a keepsake to the party aggrieved.

ART. 122. Indemnification for losses shall include not only those which may have been caused the aggrieved party, but also those that may have been inflicted upon his family or upon a third person by reason of the crime.

The courts shall regulate the amount of such indemnification upon the same terms as prescribed for the reparation of damage in the foregoing article.

ART. 123. The obligation to make restitution, to repair the damages or indemnify the losses, is transmitted to the heirs of the person liable.

The action to demand restitution, reparation, or indemnification is also transmitted to the heirs of the person injured.

ART. 124. If there are two or more persons civilly liable for a crime or misdemeanor, the courts shall determine the share for which each shall be liable.

ART. 125. Notwithstanding the provision contained in the preceding article, the principals, accomplices, and accessories, each within their respective class, shall be held jointly liable among themselves for their shares, and subsidiarily for those of the other persons liable.

The subsidiary liability shall be enforced, first against the property of the principals, next against that of the accomplices, and finally against that of the accessories.

In cases in which the joint liability has been enforced as well as the subsidiary liability, the right of action is reserved by the person who has paid, against the others for the shares due from each.

ART. 126. Whosoever may have gratuitously shared in the proceeds of a crime or misdemeanor is obliged to make indemnification in so far as he may have participated therein.

TITLE V.—PENALTIES INCURRED BY THOSE WHO VIOLATE THEIR SENTENCE, AND BY THOSE WHO COMMIT A NEW CRIME WHILE SERVING SENTENCE.

CHAPTER I.—*Penalties incurred by those who violate their sentence.*

ART. 127. Persons serving a sentence who should violate it, shall suffer an aggravation of their punishments, subject to the provisions of the following rules:

1. Those sentenced to *cadena* or *reclusión* shall complete their respective terms, and be made to suffer, during a space of time not exceeding three years, the greatest deprivations authorized by the regulations, and shall be assigned to the most painful tasks.

If the penalty should be perpetual, they shall not enjoy the benefit granted by article 27 until after having served the aggravation of penalty imposed upon them.

If the penalty should be temporary and the aggravation of penalty could not be served within the term fixed in their original sentence,

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they shall continue subject thereto until the period of the aggravation has expired.

2. Those sentenced to *relegación* or expulsion shall be condemned to *prisión correccional* for a period not to exceed three years, which must be served, in case of those sentenced to *relegación*, at the place of *relegación* if possible, and, otherwise, at the nearest possible place thereto; and those sentenced to expulsion, at one of the penal institutions of the Kingdom.

When these sentences have been served, they shall serve out their original sentences.

3. Those sentenced to *presidio*, *prisión*, or *arresto* shall suffer an increase of the said penalties, not to exceed the one-sixth part of the time still lacking for the completion of their original sentence.

4. Those sentenced to *confinamiento* shall be condemned to *prisión correccional* not to exceed two years; and after this penalty is served, they shall serve out that of *confinamiento*.

5. Persons banished shall be condemned to *arresto mayor*, after serving which they shall serve out their term of banishment.

6. Those disqualified from office, from the right of suffrage, profession, or trade, who shall obtain or exercise the same shall be condemned to *arresto mayor* and a fine of from 250 to 2,500 pesetas, if their act should not constitute a special crime.

7. Those suspended from office, the right of suffrage, profession, or trade, who shall nevertheless practice it, shall suffer an increase for a period equal to that of the original sentence and a fine of from 150 to 1,500 pesetas.

8. Those placed under the surveillance of the authorities who fail to observe the rules they ought to observe shall be condemned to *arresto mayor*, having completed which term they shall continue subject to the surveillance of the authorities until the expiration of such penalty.

ART. 128. The aggravations prescribed in the preceding article with regard to those deprived of their liberty shall not be applied to those who escape from penal institutions or the stations thereof without violence, intimidation, or resistance, without breaking doors or windows, walls, roofs, or floors, without the use of picklocks or false keys, without scaling walls, and without an understanding with other convicts or attendants of the institution.

The violation of a sentence without one or more of these attendant circumstances shall be punished with one-fourth of the penalty respectively prescribed in article 127.

CHAPTER II.—*Penalties incurred by those who commit another offense after having been condemned by final sentence, either before or while serving it.*

ART. 129. Those who should commit any crime or misdemeanor after having been condemned by a final sentence before beginning to serve it, or during the time of their punishment, shall be punished in accordance with the following rules:

1. The maximum degree of the penalty prescribed by law for the new crime or misdemeanor shall be imposed upon them.

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2. The courts shall observe, in so far as applicable to this case, the provisions contained in article 86 and rule 1 of article 87 of this Code.

3. The prisoners mentioned in this article shall be pardoned at the age of 70 years if they should already have served out their original sentences, or when they shall have completed their terms after attaining said age, unless they should not be worthy of this act of grace, on account of their bad conduct or any other circumstances.

TITLE VI.—EXTINCTION OF PENAL LIABILITY.

ART. 130. Penal liability is extinguished—

1. By the death of the culprit always, in so far as personal penalties are concerned; and with regard to pecuniary liabilities, only when no final sentence had been imposed at the time of his death.

2. By the completion of his term.

3. By amnesty which completely extinguishes the penalty and all its effects.

4. By pardon.

A person freed by a pardon can not reside in the place of residence of the offended party without his consent during the time that the sentence would have lasted had it not been for the pardon, said pardon granted being otherwise void.

5. By condonation granted by the offended party, should the penalty have been imposed for crimes in which public prosecution can not be instituted.

6. By prescription of the crime.

7. By prescription of the penalty.

ART. 131. Crimes prescribe twenty years after their commission, when the law fixes the penalty of death or of *cadena perpetua* for the crime.

After fifteen years, when the penalty fixed is any other corporal penalty.

After ten years, when the penalties fixed are correctional.

The crimes of calumny and contumely are excepted, the first of which shall prescribe after one year and the second after six months.

Misdemeanors prescribe two months after their commission.

When the penalty prescribed is a compound penalty, the higher penalty shall be observed in the application of the rules contained in the first, second, and third paragraphs of this article.

The term of the prescription shall commence to run from the day on which the crime was committed; and if not known at the time, from the day of its discovery and the beginning of the judicial proceedings for investigation and punishment.

This prescription shall be interrupted from the commencement of the proceedings against the culprit, and the term of prescription shall commence to run again from the time when such proceedings terminate without the culprit being convicted or the proceedings have stopped, unless it be through the default of the culprit being tried.

ART. 132. The penalties imposed by final sentence prescribe:

Those of death and *cadena perpetua* after twenty years.

The remaining corporal penalties after fifteen years.

The correctional penalties after ten years.

Light penalties after one year.

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The term of this prescription will begin to run from the day on which the culprit was personally notified of the final sentence; or from the day of his breaking the sentence, if he had begun to serve it.

It shall be interrupted, the time which has elapsed remaining without effect, in case the culprit should present himself or be captured, if he should have gone to a foreign country with which Spain may not have celebrated extradition treaties; or if, although she should have them, his crime should not be included in their provisions; or if he should commit a new crime before completing the term of the prescription—without prejudice, however, to the latter beginning to run anew.

ART. 133. Civil liability arising out of crimes or misdemeanors shall be extinguished in the same manner as other obligations in accordance with the rules of civil law.

Book II.—CRIMES AND THEIR PENALTIES.

TITLE I.—CRIMES AGAINST THE EXTERNAL SECURITY OF THE STATE.

CHAPTER I.—*The crime of treason.*

ART. 134. A Spaniard who shall induce a foreign power to declare war on Spain, or shall plot with it to the same end, shall be punished with the penalty of *cadena perpetua* to death if war should actually be declared, and otherwise with the penalty of *cadena temporal* in its medium degree to that of *cadena perpetua.*

ART. 135. The following shall be punished with the penalty of *cadena perpetua* to death:

1. A Spaniard who shall facilitate the enemy's entrance into the Kingdom, the capture of a fortified place, military post, national vessel, or stores of military or food supplies.

2. A Spaniard who shall seduce Spanish troops or troops in the service of Spain to go over to the enemy's ranks or to desert their flag while in the field.

3. A Spaniard who shall recruit people in Spain to make war upon the country under the flag of a hostile power.

Frustrated crimes of the character specified in the preceding numbers shall be punished as though consummated, and the attempts shall be punished with the penalty next lower by one degree.

ART. 136. The following shall be punished with the penalty of *cadena temporal* in its maximum degree to death:

1. A Spaniard who shall take up arms against his country under hostile flags.

2. A Spaniard who shall recruit people in Spain for the service of a hostile power in case such recruits were not to take a direct part in the war against Spain.

3. A Spaniard who shall furnish troops of a hostile power with money, arms, transports, articles or munitions of war, food, or other means, direct and effectual, for carrying on hostilities against Spain, or who shall favor the progress of the hostile arms in a manner not specified in the preceding article.

4. A Spaniard who shall furnish the enemy with topographical maps, or plans of fortifications, documents, or information which shall directly lead to the same end of committing hostilities on Spain or favoring the progress of the hostile arms.

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5. A Spaniard who in time of war shall prevent the national troops from receiving the assistance referred to in No. 3 or the data and information referred to in No. 4.

ART. 137. Conspiracy to commit any of the crimes mentioned in the three preceding articles shall be punished with the penalty of *presido mayor*, and the proposition to commit the said crimes with that of *presidio correccional*.

ART. 138. A foreigner residing in Spanish territory who shall commit any of the crimes specified in the preceding article shall be punished with the penalty next lower than that fixed therein, reserving the provisions of treaties or international law relating to diplomatic officials.

ART. 139. Those who shall commit the crimes specified in the preceding articles against a power allied to Spain, in the case of said power being in the field against the common enemy, shall be punished with the penalties lower by one degree than those respectively prescribed.

ART. 140. The ministers of the Crown shall incur the penalty of *cadena perpetua* to death who, in violation of article 55 of the constitution, shall authorize a decree to any of the following ends:

1. Alienating, ceding, or exchanging any part of the Spanish territory.
2. Authorizing the entrance of foreign troops into the Kingdom.
3. Ratifying treaties of offensive alliance, which may have brought about war between Spain and another power.

ART. 141. The persons mentioned in the foregoing article shall be punished with the penalty of *cadena temporal* in its medium degree to *cadena perpetua*, who, in violation of article 55 of the constitution, shall authorize a decree:

1. Ratifying treaties of offensive alliance which may not have brought about war between Spain and another power.
2. Ratifying treaties in which the stipulation is made to give subsidies to a foreign power.

CHAPTER II.—*Crimes that endanger the peace or independence of the state.*

ART. 142. The ecclesiastical minister who, in the performance of his office, shall publish or enforce bulls, briefs, or dispatches from the Holy See, or other provisions or declarations that attack the peace or independence of the state, or that oppose the observance of its laws, or encourage their nonobservance, shall incur the penalty of temporary expulsion.

Any layman committing such acts shall incur the penalty of *prisión correccional* in its minimum and medium degrees, and a fine of from 625 to 6,250 pesetas.

ART. 143. Any person who shall introduce, publish, or enforce within the Kingdom any order, provision, or document emanating from a foreign government, that attacks the independence or security of the State, shall be punished with the penalties of *prisión correccional* in its minimum and medium degrees, and a fine of from 625 to 6,250 pesetas, unless such crime directly produces others of greater gravity, in which case he shall be punished as the principal therein.

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ART. 144. If any of the crimes mentioned in the two foregoing articles should be committed by any official of the State taking advantage of his character or duties, there shall be imposed upon him, in addition to the penalties established in said articles, that of perpetual absolute disqualification.

ART. 145. He who by unlawful acts or not duly authorized should provoke or furnish a pretext for a declaration of war against Spain on the part of another power, or should expose Spaniards to annoyance or reprisals on their persons or property, shall be punished with the penalty of *reclusión temporal* if he be a State official, and otherwise with that of *prisión mayor*.

If the war be not actually declared, or the reprisals or annoyances do not take place, the respective penalties shall be imposed in the next lower degree.

ART. 146. The penalty of *reclusión temporal* shall be imposed on any person violating a truce or armistice agreed to between the Spanish nation and a hostile nation, or between their belligerent forces, land or naval.

ART. 147. A public official who, taking advantage of his office, should in any way not specifically mentioned in this chapter endanger the dignity or interests of the Spanish nation, shall be punished with the penalties of *prisión mayor* and perpetual disqualification from the office he may hold.

ART. 148. He who, without sufficient authorization, shall raise troops within Spain for the service of a foreign nation for any object or purpose whatsoever, whatever be the nation against which hostility be contemplated, shall be punished with the penalties of *prisión mayor* and a fine of from 12,500 to 125,000 pesetas.

He who, without sufficient authorization, should send out vessels for privateering shall be punished with the penalties of *reclusión temporal* and a fine of from 6,250 to 62,500 pesetas.

ART. 149. He who in time of war holds correspondence with the hostile country or territory occupied by its troops shall be punished:

1. With the penalty of *prisión mayor*, if such correspondence is carried on by ciphers or codes agreed on between the parties.

2. With that of *prisión correccional*, if it be carried on in the usual form and the Government should have forbidden it.

3. With that of *reclusión temporal*, if there were given therein notice or information of which the enemy could take advantage, whatever be the form of such correspondence, and even though the Government should not have forbidden it.

The same penalties shall be incurred by the person committing the crimes mentioned in this article, even though he should send the correspondence through friendly or neutral territory in order to elude the law.

If the culprit should intend to help the enemy with his notices or information, the provisions of articles 135 and 136 shall be observed.

ART. 150. Any Spaniard guilty of an attempt to enter a hostile country, if the Government should have prohibited it, shall be subject to the penalties of *arresto mayor* and a fine of from 375 to 3,750 pesetas.[a]

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[a] See G. O. 100, headquarters Department of Porto Rico, July 31, 1899, p. 727.

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CHAPTER III.—*Crimes against international law.*

ART. 151. He who should kill a monarch or the head of another State residing in Spain, shall be punished with the penalty of *reclusión temporal* in its maximum degree, to death.

He who should inflict serious wounds upon the said persons shall be punished with the penalty of *reclusión temporal*, and if the wounds were slight with that of *prisión mayor*.

Those who should commit any other attempt at crime not specifically mentioned in the foregoing paragraphs, against the same persons shall incur the last-named penalty.

ART. 152. He who should violate the personal immunity or the domicile of a monarch or head of another State received in Spain in their official character, or who shall violate that of a representative of another power, shall be punished with the penalty of *prisión correccional*.

If the crimes mentioned in this and in the preceding article should have no reciprocal penalties fixed therefor in the laws of the nation to whom the persons offended belong, the penalty shall be imposed upon the delinquent which would be proper for the crime, in accordance with the provisions of this code, if the person offended should not have had the official character mentioned in the foregoing paragraph.

CHAPTER IV.—*Crimes of piracy.*

ART. 153. The crime of piracy committed against Spaniards or the subjects of another nation not at war with Spain shall be punished with the penalty of *cadena temporal* to *cadena perpetua*.

If the crime should be committed against nonbelligerent subjects of another nation at war with Spain it shall be punished with the penalty of *presidio mayor*.

ART. 154. Those who commit the crimes referred to in the first paragraph of the preceding article shall incur the penalty of *cadena perpetua* to death; and those who commit the crimes referred to in the second paragraph of the same article that of *cadena temporal* to *cadena perpetua:*

1. Provided that they have taken any vessel by boarding or firing upon her.
2. Provided that such crime should be accompanied by assassination, homicide, or by any of the physical injuries inflicted on persons specified in articles 427 and 428 and in numbers 1 and 2 of article 429.
3. Provided that it was accompanied by any of the outrages against chastity specified in Chapter II, Title IX, of this book.
4. Provided that the pirates should have abandoned any persons without means of saving themselves.
5. In every case, the captain or leader of the pirates.

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TITLE II.—CRIMES AGAINST THE CONSTITUTION.

CHAPTER I.—*Crimes of lèse-majesté, against the cortes, the council of ministers, and against the form of government.*

SECTION I.—*Crimes of lèse-majesté.*

ART. 155. Upon any person who shall kill the King there shall be imposed the penalty of *reclusión perpetua* to death.

ART. 156. If the crime referred to in the foregoing article be frustrated or attempted, it shall be punished with the penalty of *reclusión temporal* in its maximum degree to death.

The conspiracy to execute with that of *reclusión temporal.*

And the proposition with that of *prisión mayor.*

ART. 157. The following shall be punished with the penalty of *reclusión temporal* to *reclusión perpetua:*

1. Those who shall deprive the King of his personal liberty.
2. Those who shall force him, by violent means or by grave intimidation, to perform any act contrary to his will.
3. Those who shall cause him grave physical injuries not included in the first paragraph of article 156.

ART. 158. If the violence, intimidation, or physical injuries referred to in numbers 2 and 3 of the preceding article be not grave, the penalty of *reclusión temporal* shall be imposed on the guilty person.

ART. 159. The penalty of *reclusión temporal* shall likewise be imposed:

1. Upon a person who shall outrage or threaten the King in his presence.
2. Upon a person who shall enter the King's residence with violence.

ART. 160. Any person who shall threaten or outrage the King publicly in writing, outside of his presence, shall be punished with the penalties of *prisión mayor* and a fine of from 1,250 to 12,500 pesetas.

Outrages and threats couched in any other form shall be punished, if they should be grave, with the penalty of *arresto mayor* in its medium degree to *prisión correccional* in its minimum degree, and if they should be light, with the penalty of *arresto mayor* in its medium degree to *prisión correccional* in its minimum degree.

ART. 161. He who shall kill the immediate successor to the Crown or the Regent of the Kingdom shall be punished with the penalty of *reclusión temporal* in its maximum degree to death.

If the crime be frustrated or attempted, with the penalty of *reclusión temporal* to death.

The conspiracy with that of *prisión mayor* in its medium and maximum degrees.

And the proposition with that of *prisión correccional* in its maximum degree to *prisión mayor* in its minimum degree.

ART 162. If the crimes mentioned in the preceding articles of this section, with the exception of those comprised in the last article, should be committed against the immediate successor to the Crown, the consort of the King or the Regent of the Kingdom, they shall be punished with the penalties lower by one degree than those prescribed therein.

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SECTION II.—*Crimes against the Cortes and its members and against the council of ministers.*

ART. 163. In case there should be a vacancy of the Crown, or in case the King should be disabled in any manner whatsoever from governing the nation, those members of the royal family, ministers, authorities, and other civil or military officials who shall disobey the Regent after he has taken the oath that the constitution requires, or the council of ministers during the time that they are provisionally governing the Kingdom in accordance therewith, shall be punished with the penalty of *relegación temporal* in its maximum degree to *relegación perpetua.*

ART. 164. The penalty of *confinamiento* shall be incurred by those who, forming part of an armed force, shall collectively address petitions to either of the co-legislative bodies, even though such petitions should not be personally presented.

The same penalty shall be incurred by those who, forming part of an armed force, should present them individually, but not according to the laws of their organization, in so far as they have relation thereto.

The penalties prescribed in this article shall be respectively imposed in their maximum degree on those who hold a command in the armed force.

ART. 165. The following shall also incur the penalty of *confinamiento:*

1. Those who shall outrage or threaten a senator or deputy on account of the opinions he may have expressed or the votes cast in the senate or chamber of deputies.

2. Those who use force, intimidation, or serious threat to prevent a senator or deputy from attending the co-legislative body to which he belongs, or who by the same means should coerce the free declaration of his opinions or the casting of his vote.

In the cases provided for in the two preceding numbers of this article, a challenge to fight a duel shall be considered as a serious threat.

ART. 166. If the outrage, threat, force, or intimidation referred to in the preceding article were not serious, the delinquent shall suffer the penalty of banishment and a fine of from 325 to 3,250 pesetas.

ART. 167. The penalties prescribed in the three preceding articles shall be imposed in their maximum degree if the guilty persons are recidivists.

ART. 168. The public official who, when the Cortes is in session, should, without due permission of the respective legislative body, detain, arrest, or commit for crime any senator or deputy, unless he had been taken *in flagrante*, shall incur the penalty of temporary special disqualification.

The same penalty shall be incurred by the judge who, having passed sentence on a senator or deputy, in a trial instituted without the permission referred to in the preceding paragraph, should carry out said sentence without the legislative body to which the accused belongs having authorized its execution.

There shall also be punished with the same penalty of temporary special disqualification the administrative or judicial officials who

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should detain a senator or deputy *in flagrante*, and fail to report it to the Cortes immediately if in session; or who should fail likewise to report to the Cortes as soon as it assembles the arrest of any of its members which they may have ordered, or the proceedings they may have instituted against such members during the interval of the sessions.

SECTION III.—*Crimes against the form of Government.*

ART. 169. Persons who shall execute any kind of acts or deeds directly tending to obtain by force any of the following ends, shall be considered guilty of crimes against the form of Government established by the constitution:

1. To substitute for the constitutional monarchical Government an absolute monarchical or republican government.

2. To deprive, in whole or in part, the King, the Regency, or the Cortes of the privileges and powers vested in them by the constitution.

3. To change the legitimate order of the succession of the Crown, or to deprive the dynasty of the rights granted it by the constitution.

4. To deprive the council of ministers of the right to govern the Kingdom provisionally until the Regent takes the oath in accordance with the constitution.

ART. 170. The following shall also commit crimes against the form of Government:

1. Those who in any kind of public meetings or places of numerous assemblage shall raise cheers or other outcries that shall provoke acclamations tending to the accomplishment of any of the purposes specified in the preceding article.

2. Those who in said meeting and places make speeches or read or distribute printed matter or carry emblems and banners, tending to the realization of the objects mentioned in the preceding article.

ART. 171. Public officials who should execute any mandate or order issued by the King in the exercise of his constitutional authority without being signed by the proper minister shall also be considered guilty of a crime against the form of Government.

ART. 172. Those who, publicly and in open hostility, should rise in arms, in order to perpetrate any of the crimes provided for in article 169, shall be punished with the following penalties:

1. Those who may have instigated, supported, or directed said rising or who appear as its principal leaders, with the penalty of *reclusión temporal* in its maximum degree to death.

2. Those in charge of a subaltern command therein, with that of *reclusión temporal* to death, should they be persons filling civil or ecclesiastical office, or if there should have been any engagement between the forces under their command and the public forces loyal to the government, or if their forces should have caused ravages among the properties of private persons, of towns, or of the State, or have cut the telegraph wires or the railroad lines, or have committed any acts of gross violence against individuals, or exacted contributions, or diverted public funds from their lawful purpose.

With the exception of these cases, the penalty of *reclusión temporal* shall be imposed on the culprit.

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3. The mere participants in the rising, with that of *prisión mayor* in its medium degree to *reclusión temporal* in its minimum degree, in the cases provided for in the first paragraph of the preceding number, and with that of *prisión mayor* in its full limit, in the cases mentioned in the second paragraph of the same number.

ART. 173. Those who, without rising in arms and in open hostility against the Government, shall commit any of the crimes provided for in the said article 169 shall be punished with the penalty of *prisión mayor*.

ART. 174. He who shall commit any of the crimes included in article 170 shall be punished with the penalty of banishment.

ART. 175. A public official who is responsible for the crime mentioned in article 171, shall suffer the penalty of temporary special disqualification.

SECTION IV.—*Provisions common to the three preceding sections.*

ART. 176. The provisions contained in the articles included in this chapter are understood without prejudice to the prescriptions of other articles of this code which fix a higher penalty for any one of the acts punished in the former.

CHAPTER II.—*Crimes committed on the occasion of the exercise of the individual rights guaranteed by the constitution.*

SECTION I.—*Crimes committed by individuals on the occasion of the exercise of individual rights guaranteed by the constitution.*

ART. 177. The following are not peaceful meetings or demonstrations:

1. Those which are held in violation of the police rules of a general or permanent character of the locality where the meeting or demonstration takes place.
2. Open-air meetings or political demonstrations held at night.
3. Meetings or demonstrations where a certain number of people assemble with firearms, lances, sabres, swords, machetes, or any other similar weapons.
4. Meetings or demonstrations which are held for the purpose of committing any of the crimes punished by this code, or those where, during the meeting, any of the crimes punished in Title III, Book II, hereof are committed.

ART. 178. The organizers and leaders of any meeting or demonstration that is held without written notice thereof having been given to the authorities twenty-four hours in advance, stating the object, time, and place of the meeting, shall incur the penalty of *arresto mayor* and a fine of from 325 to 3,250 pesetas.

ART. 179. The organizers and leaders of any meeting or demonstration included in any of the cases of article 177 shall incur the penalty of *prisión correccional* in its minimum and medium degrees, and a fine of from 325 to 3,250 pesetas.

ART. 180. In the cases of the preceding articles, if the meeting or demonstration shall not have actually taken place, the personal penalty shall be the next lower in degree.

ART. 181. For the enforcement of the provisions of the preceding articles, as leaders of the meeting or demonstration shall be considered

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those who, by the speeches they may have delivered thereat, or by the printed matter which they may have published or distributed at the same, by the mottoes, flags, or other emblems displayed, or by any other means, appear as instigating the proceedings.

ART. 182. Those merely attending the meetings or demonstrations mentioned in Nos. 1 and 2 and the first case of No. 4 of article 177, shall be punished with the penalty of *arresto mayor.*

ART. 183. The organizers, leaders, and persons present at any meeting or demonstration whatsoever shall respectively incur the penalties next higher in degree, if they fail to disperse it upon a second notice to do so from the authorities or their agents.

ART. 184. Those who assemble at meetings or demonstrations, carrying firearms, lances, sabres, swords, machetes, or any other similar weapons, shall be punished with *prisión correccional*, in its minimum and medium degree.

ART. 185. Those attending meetings or demonstrations who, during its progress, shall commit any of the crimes punished in this code, shall incur the penalty corresponding to the crime they commit, and may be arrested at once by the authorities or their agents, or in their absence by any other person attending.

ART. 186. The following are illegal associations:

1. Those which by their purpose or circumstances are contrary to public morals.

2. Those whose object it is to commit any of the crimes punished in this code.

ART. 187. The following persons shall incur the penalty of *prisión correccional* in its minimum and medium degrees, and a fine of from 325 to 3,250 pesetas:

1. The founders, directors, and presidents of associations which may be organized and are included in any of the numbers of the preceding article.

If the association should not have been organized, the personal penalty shall be that next lower in degree.

2. The founders, directors, and presidents of associations which may be organized without notice to the local authorities of their purpose and by-laws eight days before their first meeting, or of the place of the meeting twenty-four hours before the respective meeting, even if the first place selected for the meeting should later be changed for another.

3. The directors or presidents of associations who do not admit the authorities or their agents or do not give them the right of attending the meetings.

4. The directors or presidents of associations who do not stop meetings on the second notice to do so of the authorities or their agents.

ART. 188. The following shall incur the penalty of *arresto mayor:*

1. The individual members of the associations mentioned in article 186.

If the association should not have been organized, the penalties shall be public censure and a fine of from 325 to 3,250 pesetas.

2. The individual members who commit the crime mentioned in No. 3 of the foregoing article.

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3. The individual members who do not withdraw from the meeting on the second notice given by the authorities or their agents that the meeting must be suspended.

ART. 189. The founders, directors, presidents, and members of associations who again hold a meeting after its having been suspended by the authorities or their agents, provided that the judicial authority has not revoked the suspension ordered, shall incur the penalties next higher in degree than those respectively prescribed in the last two articles.

ART. 190. Those who establish and direct institutions of learning in violation of the laws in force on the subject shall incur the penalty of *arresto mayor* and a fine of from 500 to 5,000 pesetas.

ART. 191. The following shall incur the penalty of *arresto mayor:*

1. The authors, directors, editors, and printers in their respective cases of secret publications.

By such shall be considered those which do not bear the printer's name upon the copies printed or which bear a fictitious one.

2. The directors, editors, or printers (also in their respective cases) of the periodical publications who have not complied with the precepts of the special law of the press.

SECTION II.—*Crimes committed by public officials against the exercise of individual rights guaranteed by the constitution.*

ART. 192. A public official who, without the authorization of law, shall impose any punishment equivalent to personal punishment, by arrogating judicial powers to himself, shall incur:

1. The penalty of temporary absolute disqualification, if the punishment imposed were equivalent to a corporal penalty.

2. The penalty of suspension in its medium and maximum degrees, if it were equivalent to a correctional penalty.

3. The penalty of suspension in its minimum and medium degrees, if it were equivalent to a light penalty.

ART. 193. If the punishment arbitrarily imposed should have been carried out, in addition to the penalties prescribed in the preceding article, the punishment imposed shall be inflicted on the guilty official and in the same degree.

If the punishment should not have been carried out that next lower in degree shall be imposed upon him, if the former should not have gone into effect through a cause independent of his will.

ART. 194. If the penalty arbitrarily imposed should have been a pecuniary one the guilty official shall be punished:

1. With that of temporary absolute disqualification and a fine of an amount equal to three times the amount thereof if it should have been exacted.

2. With that of suspension in its medium and maximum degrees and a fine of from one-half to an equal amount thereof if the penalty had not been exacted through a cause independent of his will.

3. With that of suspension in its medium and minimum degrees if it should not have been exacted by reason of the voluntary revocation of the said official.

ART. 195. The authorities and officials, civil and military, who, even though the constitutional guaranties may be suspended, should

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have established a penalty different from that previously prescribed by law for any kind of crimes, and those who enforce such penalties, shall respectively incur, according to the facts, the penalties prescribed in the three foregoing articles.

ART. 196. The judicial authority who unduly remits a criminal case to another military or administrative authority or official which illegally claims it, shall be punished with the penalty of suspension in its medium and maximum degrees.

The military or administrative authority or official who should persist in his demand for the unlawful remission of the case and should compel the judicial authority to comply after the latter had pointed out the illegality of such a demand, shall be punished with the penalty next higher in degree.

ART. 197. If the person of the criminal shall also have been demanded and surrendered, the penalties shall, in their respective cases, be those next higher in degree than those prescribed in the preceding article.

ART. 198. The public official who, unless it be by reason of a crime, should detain a person without being authorized to do so by law, the constitutional guaranties not being suspended, shall incur the penalty of a fine of from 325 to 3,250 pesetas, if the detention should not have exceeded three days; the penalty of suspension in its minimum and medium degrees, if it should have exceeded said period and not been more than fifteen days; that of suspension in its maximum degree to temporary absolute disqualification in its medium degree, if it should not have been less than fifteen days nor have reached one month; that of *prisión correccional* in its maximum degree to *prisión mayor* in its minimum degree, if it should have been more than one month and should not have exceeded a year; and that of *prisión mayor* in its medium degree to *reclusión temporal* to its full limit, if the detention should have exceeded one year.

ART. 199. The public official who should delay complying with a judicial order to release a person imprisoned or detained whom he may have under his control, shall be punished with the penalties next higher in degree than those prescribed in the preceding article in proportion to the duration of the delay.

ART. 200. The public official who, not being a judicial authority and the constitutional guaranties not having been suspended, shall detain a person for a crime and shall not deliver him to the judicial authority within the twenty-four hours after the detention took place, shall respectively incur the penalties next higher in degree than those prescribed in the said article 198.

ART. 201. The following shall also incur the same penalties in their respective cases:

1. The warden of a jail or any other public official who shall receive as a prisoner any person whatsoever and shall allow twenty-four hours to elapse without informing the judicial authority thereof.

2. The warden of a jail or other public official who does not liberate a prisoner who should not have been committed to prison within the seventy-two hours next after due notice of his detention should have been given to the judicial authorities.

3. The warden of a jail or other public official who shall receive a person in the capacity of a prisoner, unless by virtue of a judicial order, or shall keep him in prison after seventy-two hours have

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elapsed from his having been received in such capacity or having been notified of the warrant for his commitment, unless during that time the prisoner should also have been notified of the writ ratifying the former.

4. The warden of a jail or any other public official who shall conceal a prisoner from the judicial authority.

5. The warden of a jail or other penal institution who, without an order of the judicial authority, shall have placed a prisoner or one under sentence either in solitary confinement or in a place different from that where he belongs.

6. The warden of a jail or head of a penal institution who should impose upon prisoners or those under sentence improper deprivations or treat them with unnecessary severity.

7. The warden of a jail or the head of a penal institution who should deny to a person detained or a prisoner, or to whomsoever may represent him, a certificate of his detention or imprisonment, or who should not forward any petition relative to his release.

8. The head of a penal institution who should retain a person in the institution after having received official notice of his pardon or after his term of imprisonment had expired.

The provisions of Nos. 1, 2, 3, and 5 shall not be applicable when the warden of a jail or head of a penal institution or public official acts in compliance with an order of the civil or military authority issued in the exercise of legal powers.

ART. 202. The following shall incur the penalty of suspension in its minimum and medium degrees:

1. The judicial authority who should neither set at liberty nor commit a prisoner by a warrant, stating the reasons therefor (*auto motivado*), within 72 hours following that in which he may have been placed at his disposal.

2. The judicial authority who shall not ratify a warrant of commitment or declare it null within 72 hours after it may have been issued.

3. The judicial authority who, with the exception of the cases mentioned in the two preceding numbers, shall detain in the capacity of prisoner a person whose release is proper.

4. The judicial authority who should improperly order or prolong the solitary confinement of a prisoner.

5. The clerk or secretary of a superior or inferior court who shall permit the term referred to in No. 1 of this article to elapse without notifying the prisoner of the warrant committing him to prison or the writ terminating his detention.

6. The secretary or clerk of a superior or inferior court who shall unduly delay the notification of the warrant or writ raising solitary confinement or setting a prisoner at liberty.

7. The clerk or secretary of a superior or inferior court who shall delay informing them of any petition of a person detained or imprisoned, or of his representative, relating to his freedom.

If the delay referred to in the foregoing numbers shall have lasted more than one month and shall not have exceeded three, the culprits shall incur, in their respective cases, the penalty of suspension in its maximum degree to temporary absolute disqualification in its medium degree and a fine of from 325 to 3.250 pesetas; and if it should have exceeded said period, that of temporary absolute disqualification in

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its maximum degree to perpetual absolute disqualification and a fine of from 1,250 to 12,500 pesetas.

ART. 203. The following shall incur the penalties of suspension in its minimum and medium degrees and a fine of from 325 to 3,250 pesetas:

1. The public official who, not being a judicial authority and the constitutional guaranties not having been suspended, shall enter the domicile of a Spaniard or foreigner without his consent, except in the cases and in the manner expressly prescribed by law.

2. The public official who, without being authorized by law and not being a judicial authority, and the constitutional guaranties likewise not being suspended, shall make a search through the papers of a Spaniard or of a foreigner and the effects which may be found in his domicile, unless their owner should have given his consent.

If he should not return at once to the owner the papers and effects thus examined immediately after making the search, the penalty shall be that next higher in degree.

If the crimes punished in the two preceding numbers should be committed at night, the penalties shall be those of suspension in its medium and maximum degrees and a fine of from 625 to 6,250 pesetas, reserving the provisions of the second paragraph of No. 2, with regard to which the penalty shall be that next higher in degree than those prescribed therein.

ART. 204. The public official, who on the occasion of a search through the papers and effects of a person, shall commit any other unjust vexation against persons or wanton damage to their property, shall likewise incur the penalties of suspension in its minimum and medium degrees and a fine of from 325 to 3,250 pesetas.

If he should remove such property and appropriate it to himself, he shall be punished as guilty of the crime of robbery with violence against the person.

ART. 205. The judicial authority who, with the exception of the cases prescribed and in violation of the forms established by law, and the constitutional guaranties not being suspended, should enter by night the domicile of a Spaniard or foreigner without his consent, shall incur the penalty of suspension in its minimum and medium degrees and a fine of from 325 to 3,250 pesetas.

ART. 206. The same penalty shall be incurred by any authority who shall make an examination of papers and effects in the domicile of a Spaniard or foreigner, unless in the presence of the interested person or in that of a member of his family, or, in their absence, in that of two witnesses from the same locality.

ART. 207. The public official who, not being a judicial authority, shall detain private correspondence intrusted to the mails shall incur a fine of from 325 to 3,250 pesetas.

ART. 208. The public official who, not being a judicial authority, shall open private correspondence intrusted to the mails shall incur a fine of from 325 to 3,250 pesetas.

The public official who shall open a telegraphic message intrusted to him for delivery at a domicile shall incur the same penalty.

ART. 209. The public official who shall extract letters from the mails shall be punished with the penalty of a temporary absolute dis-

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qualification in its minimum and medium degrees and a fine of from 1,250 to 12,500 pesetas.

ART. 210. The public official who, without being expressly authorized by law, and the constitutional guaranties not being suspended, shall banish a person to a distance greater than 250 kilometers from his domicile, unless by virtue of a judicial sentence, shall incur the penalty of a fine of from 325 to 3,250 pesetas.

The public official who, without being expressly authorized by law, and the constitutional guaranties not being suspended, shall compel a person to move his domicile or residence, shall be punished with the penalty of banishment and a fine of from 625 to 6,250 pesetas.

ART. 211. The public official who, without being authorized by law, shall deport or exile from the territory of the kingdom any person, unless by virtue of a final sentence, shall be punished with the penalty of *confinamiento* and a fine of from 1,250 to 12,500 pesetas.

ART. 212. A public official who orders the payment of a general, provincial, or municipal tax not legally authorized shall be punished with the penalty of suspension in its maximum degree to temporary absolute disqualification in its minimum degree and a fine of from 625 to 6,250 pesetas.

ART. 213. The public officials who shall exact from taxpayers to the State, province, or municipality the payment of taxes not authorized according to their respective classes by the Cortes, the provincial deputation, or the municipal council, shall incur the penalty of suspension in its medium and maximum degree to temporary absolute disqualification in its medium degree and a fine of from 625 to 6,250 pesetas.

If such exaction should have been consummated, the fine shall be an amount equal to three times that of the amount collected.

If the exaction should have been effected by employing compulsion or any other means of coercion, the penalty shall be that of temporary absolute disqualification and the aforesaid fine.

ART. 214. If the amount collected should not have been paid according to its character into the treasury of the province or municipality by the fault of the person who may have collected it, he shall be punished as a swindler by the maximum degree of the proper punishment therefor.

ART. 215. The authorities who shall give their aid and cooperation to the officials referred to in the two preceding articles shall incur the penalties of temporary absolute disqualification and a fine of from 325 to 3,250 pesetas.

If they should have received profits from the amounts collected, they shall be punished as equal principals in the crime punished in the preceding article.

ART. 216. The public official who shall condemn the property of any person, unless by virtue of a mandate from the competent authorities, for reason of public utility, before proper indemnification made therefor, shall incur the penalties of suspension in its medium and maximum degrees and a fine of from 625 to 6,250 pesetas.

If he shall disturb any person in the possession of his property, unless by virtue of a judicial writ or a mandate from the competent authority, issued in accordance with the express provisions of the laws, he shall incur the same penalty.

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ART. 217. The following shall be punished with the penalties of suspension in its minimum and medium degrees and a fine of from 325 to 3,250 pesetas:

1. The public official who, the constitutional guaranties not being suspended, should forbid or prevent a person, neither under arrest nor a prisoner, from attending any meeting or demonstration that is legal in accordance to law.

2. The public official who, under the same conditions, should prevent or prohibit a person from forming part of any association, unless it be one of those included in article 186 of this code.

3. The public official who, under the same conditions as of the preceding articles, should prevent or forbid a person to address, either by himself or together with others, petitions to the Cortes, the King, or the authorities, unless it should have been forbidden to them by law.

ART. 218. A public official who, being neither authorized by law and the constitutional guaranties not being suspended, shall in any manner whatsoever prevent the holding of a peaceful meeting or demonstration of which he had official notice, or the foundation of any association not included in article 186 of this code, or the holding of its meetings, unless it be those in which any of the crimes punished in Title III, Book II of the same, should have been committed, shall incur the penalty of suspension in its medium and maximum degrees and a fine of from 625 to 6,260 pesetas.

ART. 219. The public official who, not being authorized by a law and the constitutional guaranties not being suspended, shall order the dissolution of any meeting or pacific demonstration, or the suspension of any association not included in article 186 of this code, shall be punished with the penalty of suspension in its maximum degree, to temporary absolute disqualification in its minimum degree, and a fine of from 625 to 6,250 pesetas.

ART. 220. The public official who does not bring to the notice of the judicial authorities his suspension of an unlawful association or the meeting of any other association whatsoever, and the reasons of the suspension ordered, within the twenty-four hours following his action, shall incur the penalty of suspension in its medium and maximum degrees and a fine of from 625 to 6,250 pesetas.

ART. 221. The same penalties shall be incurred by the public official who shall order the closing or dissolution of any private educational institution, unless for sufficient reasons of hygiene or morals or other causes expressly provided by law, and he who shall not inform the judicial authorities of such closing or dissolution within the twenty-four hours following its having taken place.

ART. 222. The penalty of banishment shall be incurred by the public official in its minimum and medium degrees, who without having demanded two successive times the dissolution of any meeting or demonstration, or the suspension of the session of an association, should employ force to dissolve or suspend it, unless there should have been previous violent aggression on the part of those taking part in the meeting, demonstration, or session of the association.

If slight injuries should result from the employment of force to one or more of those present, the penalty shall be that of banishment in its medium and maximum degrees and the same fine.

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If the injuries should be grave, the penalty shall be that of *confinamiento* in its minimum and medium degrees and a fine of from 1,250 to 12,500 pesetas.

If death should have resulted therefrom, the penalty shall be that of *confinamiento* in its maximum degree to *relegación temporal* and a fine of from 3,125 to 31,250 pesetas.

ART. 223. A public official who, after a meeting or demonstration has been dissolved or any association or its meetings suspended, should refuse to give information to the judicial authority requesting it, of the causes which gave rise to said dissolution or suspension, shall be punished with the penalty of temporary absolute disqualification and a fine of from 625 to 6,250 pesetas.

SECTION III.—*Crimes in violation of the constitutional provisions relating to religion and worship.*

ART. 224. Those who by violence, disorderly conduct, threats, or tumults, prevent, interrupt, or disturb the functions, acts, ceremonies, or manifestations of the religion of the State shall be punished with the penalty of *prisión correccional* and a fine of from 65 to 650 pesetas if the crime were committed in churches, chapels, or places devoted to worship; and with that of *arresto mayor to prisión correccional* in its minimum degree, and a fine of from 50 to 500 pesetas if the offense be committed in any other place.

ART. 225. He who with the intention of offending the Catholic religion should trample, cast on the ground, or in any other manner profane the sacred elements of the Eucharist shall be punished with the penalty of *prisión mayor.*

ART. 226. Those who in offense of the State religion shall trample, destroy, break, or profane sacred objects devoted to worship within churches or without them, shall incur the penalty of *prisión correccional.*

ART. 227. He who with deliberate intention makes ridicule of the Catholic religion by word or writing, publicly contemning its dogmas, rites, or ceremonies, shall be punished with the penalty of *arresto mayor* to *prisión correccional* in its minimum degree if the deed should have occurred in churches or on the occasion of acts of worship; and with that of *arresto mayor* if the crime should have been committed in other places and not on the occasion of such acts of worship.

ART. 228. He who shall practice outside the precincts devoted to worship other than that of the Catholic religion public ceremonies or celebrations belonging to the same, shall incur the penalty of *confinamiento.*

For the purposes of this article the respective cemeteries of the dissenting religions shall be considered as precincts similar to those wherein they worship.

ART. 229. He who shall physically maltreat a minister of the Catholic religion while performing the offices of his ministry shall incur the penalty of *prisión correccional.*

He who shall offend under similar circumstances by word or gestures shall be punished with the penalty of *arresto mayor* in its medium degree to *prisión correccional* in its maximum degree.

ART. 230. He who by means of threats, violence, or other lawless coercion shall force any person to perform acts of worship or to

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attend the rites of a religion not his own, shall incur the penalty of *prisión correccional* in its medium and maximum degrees and a fine of from 625 to 6,250 pesetas.

ART. 231. He who by the same means shall prevent any person from performing the acts of worship of the religion which he professes, or from attending its rites, shall incur the penalties prescribed in the preceding article.

ART. 232. The following shall incur the penalty of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree and a fine of from 300 to 3,000 pesetas:

1. He who by the means mentioned in the preceding article shall force any person to perform the acts of worship or attend the rites of a religion which he himself professes.

2. He who by the same means shall prevent any person from observing the religious festivals of his sect.

3. He who by the same means shall prevent any person from opening his shop, warehouse, or other establishment, or force him to abstain from any work of whatsoever nature on stated religious festivals.

The provisions of the foregoing paragraph shall be understood without prejudice to the general or local police regulations or of public order.

ART. 233. Those who by the employment of the means mentioned in article 224 shall prevent or disturb the acts of worship or the ceremonies of a religion distinct from the Catholic religion within its precincts or cemeteries, respectively, shall be punished with the penalty of *arresto mayor*.

ART. 234. He who shall physically maltreat a minister of any religion other than the Catholic religion while exercising his functions shall be punished with the penalty of *arresto mayor* in its medium and maximum degrees to *prisión correccional* in its minimum degree.

Offense by speech, under similar circumstances, shall be punished with the penalty of *arresto mayor*.

ART. 235. He who shall publicly ridicule any of the dogmas or ceremonies of a religion that has adherents in Spain shall be punished with a fine of from 325 to 3,250 pesetas.

SECTION IV.—*Provisions common to the three preceding sections.*

ART. 236. The provisions of this chapter shall be understood without prejudice to those of other chapters of this code which prescribe a higher penalty for any of the acts included in the three preceding sections.

TITLE III.—CRIMES AGAINST PUBLIC ORDER.

CHAPTER I.—*Rebellion.*

ART. 237. Those who shall rise publicly and with open hostility against the Government for any of the following purposes are guilty of rebellion:

1. To proclaim the independence of the islands of Cuba and Porto Rico, or either of them.

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2. To dethrone the King, or depose the Regent or Regency of the Kingdom, or deprive them of their personal liberty, or oblige them to execute an act contrary to their will.

3. To prevent the holding of elections for deputies to the Cortes or Senators in the whole Kingdom, or the lawful assemblage of the same.

4. To dissolve the Cortes or prevent the deliberations of either of the colegislative bodies, or to force them to adopt any resolution.

5. To commit any of the crimes specified in article 163.

6. To subtract the Kingdom, or any part of it, or any body of land or naval troops, or any other class of armed force from its obedience to the Supreme Government.

7. To use and exercise the constitutional prerogatives of the ministers of the Crown, or to despoil them thereof, or hinder or curtail their free exercise of the same.

ART. 238. Those who by inciting the rebels and making them resolute shall have promoted and sustained the rebellion, begun for the purpose mentioned in No. 1 of the preceding article, and its principal chiefs, shall be punished with the penalty of *cadena perpetua* to death; and in other cases with that of *reclusión temporal* in its maximum degree to death.

ART. 239. Those who exercise a subaltern command in a rebellion organized to commit the crime referred to in No. 1 of article 237 shall incur the penalty of *cadena perpetua* to death, if they were persons filling a civil or ecclesiastical office.

ART. 240. Those who exercise a subaltern command in a rebellion, the purpose of which is to commit any crime mentioned in the other numbers of article 237, shall incur the penalty of *reclusión temporal* in its maximum degree to death, and that of *reclusión temporal* if said purpose were not included in any of them.

ART. 241. The mere participants in a rebellion shall be punished with the penalty of *reclusión temporal* in its fullest extent in the cases mentioned in the first paragraph of No. 2 of article 172, and with that of *prisión mayor* in its medium degree to *reclusión temporal* in its minimum degree, should they not be included therein.

ART. 242. If the rebellion should not have been organized by known leaders, those who in fact lead the others, or speak for them, or sign the receipts or other documents in their name, or exercise other similar acts in representation of the others, shall be considered leaders.

ART. 243. The following shall be punished as rebels, with the penalty of *prisión mayor:*

1. Those who, without rising against the Government, commit by craft or any other means whatsoever the crimes included in article 237.

2. Those who seduce troops or other class of land or naval armed force in committing the crime of rebellion.

If the rebellion actually takes place, the seducers shall be considered promoters thereof and shall suffer the penalty prescribed in article 238.

ART. 244. Conspiracy to commit the crime of rebellion shall be punished with the penalty of *prisión correccional* in its medium and maximum degree.

The proposal to do so shall be punished with that of *reclusión temporal* in its minimum and medium degree.

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CHAPTER II.—*Sedition.*[a]

ART. 245. Those who shall rise publicly and tumultuously in order to attain by force, or outside of legal methods, any one of the following objects, are guilty of sedition:

1. To prevent the promulgation or execution of laws, or the free holding of popular elections in any province, circumscription, or electoral district.

2. To prevent any authority, corporation, official, or public officer from freely exercising his duties or the execution of his judicial or administrative orders.

3. To wreak any deed of hate or revenge upon the person or property of any authority or its agents.

4. To wreak, with a political or social object, any deed of hate or revenge upon individuals, or upon any class in the State.

5. To despoil, with a political or social object, any class of persons, the municipality, the province, or the State of all or any part of their property, or to lay waste or destroy such property.

ART. 246. Those who by inciting the seditious and making them resolute shall have promoted and supported sedition and its principal leaders, shall be punished with the penalty of *reclusión temporal*, should they be included in any of the cases specified in the first paragraph of No. 2 of article 172, and with that of *prisión mayor*, if they are included in none of these.

ART. 247. Mere participants in sedition shall be punished with the penalty of *prisión correccional* in its medium and maximum degrees in the cases specified in the first paragraph of No. 2 of said article 172, and with that of *prisión correccional* in its minimum and medium degrees if not included therein.

ART. 248. The provisions of article 242 are applicable to the case of sedition which has not been organized by known leaders.

ART. 249. A conspiracy to commit the crime of sedition shall be punished with the penalty of *arresto mayor* to *prisión correccional* in its minimum degree.

ART. 250. Those who shall seduce troops, or any other class of land or naval armed forces whatsoever, to commit the crime of sedition, shall be punished with the penalty of *prisión correccional* in its medium and maximum degree.

If the sedition should have been effectual, the seducers shall be considered as promoters thereof and shall suffer the penalty prescribed in article 246.

ART. 251. If the sedition should not have reached the point of embarrassing in a serious manner the exercise of public authority, nor having caused the perpetration of any other grave crime, the courts shall reduce the penalties prescribed in this chapter by one or two degrees.

CHAPTER III.—*Provisions common to the two preceding chapters.*

ART. 252. The courts shall reduce by one or two degrees the penalties prescribed in the two preceding chapters in the case of rebels and seditious persons who may disband or submit to the lawful authori-

[a] See G. O. 109, Headquarters, Department of Porto Rico, July 31, 1899, p. 727.

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ties at the first summons to do so, provided that they were not public employees.

ART. 253. Individual crimes committed during a rebellion or sedition, or on the occasion thereof, shall be respectively punished according to the provisions of this code.

If the authors thereof can not be discovered, the principal leaders of the rebellion or sedition shall be punished as such.

ART. 254. The authorities directly appointed by the government who shall not have resisted the rebellion or sedition by all the means within their power, shall suffer the penalty of temporary to perpetual absolute disqualification.

Those not directly appointed by the government shall suffer the penalty of suspension in its maximum degree to temporary absolute disqualification in its medium degree.

ART. 255. The employees who continue to discharge their duties under the orders of those in uprising, or who, without having had their resignation from office accepted, abandon it when there is danger of rebellion or sedition, shall incur the penalty of temporary special disqualification.

ART. 256. Those who shall accept office from rebels or seditious persons shall be punished with the penalty of temporary absolute disqualification for public office in its minimum degree.

ART. 257. The penalties of *prisión mayor* and *prisión correccional*, which are imposed for the crimes included in Chapters I and II, shall be served in institutions within or without the islands of Cuba or Porto Rico.

CHAPTER IV.—*Criminal attempts against the authorities and their agents—resistance and disobedience.*

ART. 258. The following commit criminal attempt:

1. Those who, without public uprising, employ force or intimidation for any of the purposes mentioned under the crimes of rebellion and sedition.

2. Those who attack the authorities or their agents, or employ force against them, or gravely intimidate them, or offer an equally grave resistance while they are discharging the functions of their office or on the occasion thereof.

ART. 259. The criminal attempts included in the preceding article shall be punished with the penalties of *prisión correccional* in its medium degree to *prisión mayor* in its minimum degree, and a fine of from 625 to 6,250 pesetas, provided that any of the following circumstances are attendant:

1. If the aggression were accomplished by weapons.
2. If those guilty thereof were public officials.
3. If the delinquents laid hands upon the authorities.
4. If in consequence of compulsion the authorities should have yielded to the exactions of the delinquents.

Without these circumstances the penalty shall be *prisión correccional* from its minimum to its medium degrees, and a fine of from 375 to 3,750 pesetas.

ART. 260. The penalty prescribed in the last paragraph of the foregoing article shall be imposed in its maximum degree upon culprits

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if they employ the force or intimidation mentioned in number 1 of article 258 for the purpose mentioned in number 1 of article 237, or if they should have laid hands upon persons who may have come to the assistance of the authorities, or upon their agents, or upon public officials.

ART. 261. The persons who, without being included in article 258, should resist the authorities or their agents, or should grossly disobey them in the performance of the duties of their office, shall be punished with the penalties of *arresto mayor* and a fine of from 325 to 3,250 pesetas.

CHAPTER V.—*Acts of disrespect, insults, acts of contumely and threats against authorities; and insults, acts of contumely, and threats against their agents and other public officials.*

ART. 262. The following commit an act of disrespect:

1. Those who, while a minister of the Crown or an authority is in the exercise of his functions or on the occasion thereof, shall calumniate, outrage, or insult him by deed or word, in his presence or in a writing addressed to him, or who shall threaten him.

2. The public official who, while his hierarchical superior is in the exercise of his office, shall calumniate, outrage, or insult him by act or word, in his presence or in any writing addressed to him, or who shall threaten him.

ART. 263. If the calumny, insult, outrage, or threat referred to in the foregoing article should be grave, the delinquent shall suffer the penalty of *prisión correccional* in its minimum and medium degrees and a fine of from 375 to 3,750 pesetas.

If they should be less grave, the penalty shall be that of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree and a fine of from 325 to 3,250 pesetas.

ART. 264. Provocation to fight a duel, even though dissembled or having an appearance of privacy, shall be considered a grave threat for the purposes of the foregoing.

ART. 265. Those who, while a minister of the Crown or an authority is in the exercise of his functions or on the occasion thereof, shall calumniate, outrage, or insult him by deed or word, outside his presence, or in a writing not addressed to him, shall be punished with the penalty of *arresto mayor*.

ART. 266. The penalty of *arresto mayor* shall also be imposed on those who outrage, insult, or threaten, by act or word, public officials or agents of the authorities, in their presence or in a writing addressed to them.

CHAPTER VI.—*Public disorders.*

ART. 267. Those who shall raise a tumult or grossly disturb order at the hearing of a superior or inferior court at the public acts pertaining to any public authority or corporation at any electoral college, offices, or public institutions, at public spectacles or solemnities, or a large meeting, shall be punished with the penalties of *arresto mayor* in its medium degree to *prisión correccional* in its minimum degree and a fine of from 375 to 3,750 pesetas.

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Those who shall cause a tumult or grossly disturb order on farms or plantations by refusing to work or by disobeying or resisting the persons in charge of their direction or management shall incur the same penalties.

ART. 268. Those who shall grossly disturb public order in order to offer an outrage or other wrong to any individual person shall incur the penalty of *arresto mayor*.

If the purpose of the offense were to prevent any person from exercising his political rights, the said penalty of *arresto mayor* in its maximum degree shall be imposed on the culprit.

ART. 269. The penalty of *arresto mayor* shall also be imposed, unless a higher penalty is applicable in accordance with other articles of this code, on those who shall raise cries provocative of rebellion or sedition at any meeting or association, or in any public place, or who shall show in the same places badges or banners which might directly provoke the disturbance of public order.

ART. 270. Those who shall extricate from jails or penal institutions any person detained therein, or who facilitate his escape, shall be punished with the penalty of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree, if they should employ violence, intimidation, or subornation for the purpose, and with the penalty of *arresto mayor* should they make use of other means.

If the escape of the prisoner should be effected outside of said institutions by means of surprising those charged with their conduction, the same penalties shall be applied in their minimum degree.

ART. 271. Those who shall place obstructions or damage railroad tracks, or obstruct or damage telegraph lines or intercept messages or correspondence, shall be punished with the penalty of *prisión correccional* in its minimum to its medium degree.

ART. 272. Upon those who destroy or injure pictures, statues, or any other public monument of usefulness or ornamentation shall be imposed the penalty of *arresto mayor* in its medium degree to *prisión correccional* in its minimum degree.

CHAPTER VII.—*Provisions common to the three preceding chapters.*

ART. 273. For the purposes of the articles included in the three preceding chapters, a person who, by himself alone, or as a member of any corporation or tribunal, shall exercise special jurisdiction, shall be considered as an authority.

The officials of the Department of Public Prosecution (Ministerio Fiscal) shall also be considered authorities.

ART. 274. If the person committing any of the crimes specified in the three preceding chapters should be a civil or ecclesiastical authority he shall be punished with the maximum of the respective penalty and with temporary absolute disqualification.

ART. 275. The ministers of a religion who, in the exercise of their calling, provoke the execution of any of the crimes included in the three preceding chapters, shall be punished with the penalty of banishment, if their provocations were of no effect, and with that of *confinamiento mayor* if they did produce effect, unless a greater penalty is prescribed in other articles of this code for the crime committed.

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TITLE IV.—FALSITIES AND FALSIFICATIONS.

CHAPTER I.—*Falsification of the royal signature or stamp, the signature of ministers, seals, and marks.*

SECTION I.—*Falsification of the royal signature or stamp and the signature of ministers.*

ART. 276. He who shall counterfeit the stamp of the King or of the Regent of the Kingdom, or the signatures of the ministers of the Crown, shall be punished with the penalty of *cadena temporal.*

ART. 277. He who shall counterfeit the signature or stamp of the head of a foreign power, or the signature of his ministers, shall be punished with the penalty of *presidio mayor* if the culprit should have made use in Spanish territory of the counterfeited signature or stamp, and with that of *presidio correccional* in its medium to its maximum degree if he should have made use of them outside of said territory.

ART. 278. He who should knowingly make use of a counterfeited signature or stamp of the classes referred to in the preceding article, shall incur the penalty next lower in degree than that prescribed therein for the counterfeiters thereof.

SECTION II.—*Falsification of seals and marks.*

ART. 279. He who shall counterfeit the great seal of the State shall be punished with the penalty of *cadena temporal.*

He who should knowingly make use of the counterfeit seal of the State shall be punished with the penalty next lower in degree than that prescribed in the preceding paragraph.

ART. 280. He who shall counterfeit the seal of the State of a foreign power, and make use of it in Spanish territory, shall be punished with the penalty of *presidio mayor*, and with that of *presidio correccional* in its medium to its maximum degree, if he should have made use of it outside of the said territory.

ART. 281. He who, knowing of the falsity of the seals referred to in the two preceding articles, but without having participated in their falsification, should avail himself of or use them, shall be punished with the penalty next lower in degree than that prescribed in the said articles for the counterfeiters.

ART. 282. The counterfeiting of marks and seals of inspectors of weights and measures shall be punished with the penalties of *presidio mayor* and a fine of from 625 to 6,250 pesetas.

ART. 283. Those who knowingly expose for sale objects of gold or silver marked with false stamps of assay shall be punished with the penalty prescribed in the preceding article.

ART. 284. The counterfeiting of the seals used by any authority, tribunal, official corporation, or public office shall be punished with the penalty of *presidio correccional* in its minimum and medium degrees and a fine of from 375 to 3,750 pesetas.

The mere use of seals of this kind with knowledge of their falsity shall be punished with the same penalties, if gain to the prejudice of the public funds were intended; otherwise, the penalty next lower in degree shall be imposed on the culprit.

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ART. 285. The falsification of the seals, marks, and countersigns which are employed in the offices of the State in order to identify some object or to insure the payment of taxes, shall be punished with the penalties of *presidio correccional* in its minimum and medium degrees and a fine of from 375 to 3,750 pesetas.

ART. 286. If the falsifications referred to in the two preceding articles should have been accomplished without the employment of stamps or dies or other mechanical instruments used in counterfeiting, the penalty next lower in degree than those prescribed for such crimes shall be imposed on the culprit.

ART. 287. The falsification of seals, marks, tickets, or countersigns which industrial or commercial establishments make use of, shall be punished with the penalties of *presidio correccional* in its minimum and medium degrees.

ART. 288. He who shall place on sale objects of commerce, substituting for the mark or name of the real manufacturer the mark or name of a fictitious one, shall be punished with the penalty of *arresto mayor* and a fine of from 325 to 3,250 pesetas.

ART. 289. He who removes from any seal, ticket, or countersign the mark or sign that indicates that it had already been used or was useless for the object of its issue, shall also incur the penalty of *arresto mayor* and a fine of from 325 to 3,250 pesetas.

He who knowingly makes use of such class of seals or countersigns shall incur a fine of from 325 to 3,250 pesetas.

CHAPTER II.—*Counterfeiting of money.*

ART. 290. Whosoever shall make counterfeit money, of a value less than the legitimate, by imitating gold or silver coins lawfully current in the Kingdom, shall be punished with the penalties of *cadena temporal* in its medium degree to *cadena perpetua*, and a fine of from 625 to 6,250 pesetas, if the counterfeit money were of copper.

ART. 291. He who shall clip lawful coins shall be punished with the penalties of *presidio mayor* and a fine of from 625 to 6,250 pesetas if the money were of gold or silver, and with that of *presidio correccional* in its minimum and medium degrees and a fine of from 325 to 3,250 pesetas, if it were of copper.

ART. 292. He who shall make counterfeit money of the value of the genuine by imitating money that is lawfully current in the Kingdom, shall be punished with the penalties of *presidio correccional* in its medium and maximum degrees and a fine of from 625 to 6,250 pesetas.

ART. 293. He who shall make counterfeit money by imitating money that is not lawfully current in the Kingdom shall be punished with the penalties of *presidio correccional* in its medium and maximum degrees and a fine of from 325 to 3,250 pesetas.

ART. 294. He who shall clip lawful money that is not lawfully current in the Kingdom shall be punished with the penalties of *presidio correccional* in its minimum and medium degrees and a fine of from 625 to 6,250 pesetas.

ART. 295. The penalties prescribed in the two foregoing articles shall be imposed in their respective cases on those who shall introduce counterfeit money into the islands of Cuba and Porto Rico.

Those who circulate counterfeit money shall also be punished with the same penalties when connivance exists between them and the makers thereof or those who introduce it.

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ART. 296. Those who, without the connivance referred to in the preceding article, shall pass counterfeit or clipped money which, with knowledge of its character, they had acquired for the purpose of circulating it, shall be punished with the penalties of *presidio correccional* in its medium and maximum degrees and a fine of from 325 to 3,250 pesetas.

ART. 297. He who, having received counterfeit money in good faith should issue it after knowing its falsity, shall be punished, if the amount spent exceed 325 pesetas, with a fine of from an amount equal to up to one three times that of the genuine money.

ART. 298. Those in whose possession counterfeit money shall be found which, from its amount and character, may reasonably allow the inference that it was intended for circulation, shall be punished as guilty of an attempt to commit the crimes of circulating counterfeit money.

CHAPTER III.—*Falsification of bank notes, instruments of credit, stamped paper, postage stamps, and other stamped articles whose sale is reserved to the state.*

ART. 299. Those who shall falsify bank notes or other instruments payable to the bearer, or their coupons, whose issue may have been authorized by the law of the Kingdom, or those who shall introduce them into the islands of Cuba and Porto Rico, shall be punished with the penalties of *cadena temporal* in its medium degree to *cadena perpetua* and a fine of from 6,250 to 62,500 pesetas.

The same penalty shall be imposed upon those who shall circulate them in connivance with the counterfeiter or introducer thereof.

ART. 300. Those who, without being in relation with the counterfeiters or introducers thereof, shall acquire, for the purpose of circulation, bank notes or other instruments payable to bearer, and their coupons, knowing that they are false, shall be punished with the penalty of *cadena temporal.*

ART. 301. Those who shall, in the islands of Cuba and Porto Rico, falsify bank notes or any other class of instruments payable to bearer, or their coupons, whose issue is authorized by a law of a foreign country, or by a provision that has there the same force as law, shall also be punished with the penalty of *cadena temporal.*

Those who, in complicity with the counterfeiters, shall introduce them shall incur the same penalty.

ART. 302. Those who, having in good faith acquired bank notes or other instruments payable to bearer, or their coupons, included in articles 299 and 301, and shall pass them knowing of their falsity, shall be punished with the penalties of *presidio correccional* in its medium and maximum degrees and a fine of from 625 to 6,250 pesetas.

ART. 303. Those who shall counterfeit or introduce into the islands of Cuba or Porto Rico bonds payable to order, or other documents of credit not to bearer, whose issue is authorized by virtue of a law, shall be punished with the penalties of *cadena temporal* and a fine of from 6,250 to 62,500 pesetas.

ART. 304. Those who shall counterfeit securities payable to order, or any other class of instruments of credit not to bearer, whose issue is authorized by a law of a foreign country, or by a provision that has

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there the same force as a law, shall be punished with the penalty of *presidio mayor* in its medium degree to *cadena temporal* in its minimum degree.

ART. 305. He who knowingly shall negotiate or make profit in any other manner, to the prejudice of a third person, of a counterfeit security of those included in the preceding articles, shall incur the penalties of *presidio correccional* in its medium and minimum degrees and a fine of from 375 to 3,750 pesetas.

ART. 306. He who shall present in any judicial proceedings any security payable to the bearer, or its coupons, knowing their falsity, shall incur the penalties of *presidio correccional* in its medium and minimum degrees and a fine of from 325 to 3,250 pesetas.

ART. 307. He who shall counterfeit stamped paper, telegraph or postage stamps, or any other class of stamped articles whose sale is reserved to the State, shall be punished with the penalty of *presidio mayor*.

The same penalty shall be imposed on those who introduce the same into the territory of Cuba or Porto Rico, or on those who circulate them in connivance with the counterfeiters or introducers thereof.

ART. 308. Those who, without being in connivance with the counterfeiters or introducers thereof, shall knowingly acquire false paper, stamps, or articles of the kind mentioned in the preceding article, in order to circulate them, shall be punished with the penalty of *presidio correccional* in its minimum and medium degrees and a fine of from 375 to 3,750 pesetas.

ART. 309. Those who, having in good faith acquired public securities of the character mentioned in the foregoing article shall circulate them, knowing their falsity, shall incur the penalty of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree.

Those who merely use them, having knowledge of their falsity, shall incur a fine of from five to ten times the value of the genuine paper or securities they may have used.

CHAPTER IV.—*Falsification of documents.*

SECTION I.—*Falsification of official and commercial documents and telegraphic dispatches.*

ART. 310. The penalties of *cadena temporal* and a fine of from 1,250 to 12,500 pesetas shall be imposed on a public official who, taking advantage of his authority, shall commit a falsification—

1. By counterfeiting or feigning any writing, signature, or rubric.
2. By including in any act the participation of persons who had no such participation.
3. By attributing to those who were present thereat declarations or statements different from those which they made.
4. By falsifying the truth in a narration of facts.
5. By altering true dates.
6. By making in a genuine document any alteration or interlineation altering its meaning.
7. By giving out an authentic copy of a fictitious document, or by stating therein a contrary or different thing from that contained in the genuine original.

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8. By intercalating any instrument in a protocol, register, or official book.

An ecclesiastical minister who shall commit any of the offenses included in the foregoing numbers, with regard to acts or documents which might affect the civil status of persons, shall incur the penalty prescribed in the first paragraph of this article.

ART. 311. An individual who shall commit any of the falsifications specified in the preceding article in public or official documents or in bills of exchange, or any other class of commercial paper, shall be punished with the penalties of *presidio mayor* and a fine of from 1,250 to 12,500 pesetas.

ART. 312. He who shall knowingly present in judicial proceedings or should use with intent of gain a false document of the kind mentioned in the foregoing articles, shall be punished with the penalty lower by two degrees than that prescribed for the falsifiers.

ART. 313. A public official in charge of the telegraph service who shall invent or falsify a telegraphic message shall incur the penalty of *prisión correccional* in its medium and maximum degrees.

He who shall make use of the false message with intent of gain or desire to prejudice another shall be punished as the principal in the falsification.

SECTION II.—*Falsification of private documents.*

ART. 314. He who, to the prejudice of a third person or with intent of causing it, shall, in a private document, commit any of the falsifications specified in article 310, shall be punished with the penalties of *presidio correccional* in its minimum and medium degrees and a fine of from 625 to 6,250 pesetas.

ART. 315. He who, without having taken part in the falsification, should present in judicial proceedings or shall use with intent of gain or to the prejudice of a third person, knowingly, a false document of those included in the preceding article, shall incur the penalty lower by one degree than that prescribed for the falsifiers.

SECTION III.—*Falsification of passports, cédulas of residence, and certificates.*

ART. 316. A public official who, taking advantage of his office, shall issue a passport or a *cédula* of residence under a fictitious name, or shall give it in blank, shall be punished with the penalties of *prisión correccional* in its minimum and medium degrees, and temporary special disqualification.

ART. 317. He who shall make a false passport or *cédula* of residence shall be punished with the penalty of *arresto mayor* in its maximum degree, to *prisión correccional* in its minimum degree, and a fine of 325 to 3,250 pesetas.

The same penalties shall be imposed on the person who, in a genuine passport or *cédula* of residence, shall change the name of the person in whose favor it may have been issued, or of the authority which issued it, or who shall alter it in any other essential particular.

ART. 318. He who shall make use of the passport or *cédula* of residence referred to in the preceding article shall be punished with a fine of from 325 to 3,250 pesetas.

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Those who shall make use of a genuine passport or *cédula* of residence issued in favor of another person shall incur the same penalty.

ART. 319. The physician who shall deliver a false certificate of illness or physical injury, for the purpose of exempting a person from any public service, shall be punished with the penalties of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree and a fine of from 325 to 3,250 pesetas.

ART. 320. A public official who shall issue a false certificate of merit or service, of good conduct, of poverty, or of other similar circumstances shall be punished with the penalties of suspension in its medium and maximum degrees and a fine of from 325 to 3,250 pesetas.

ART. 321. An individual who shall falsify a certificate of the kinds mentioned in the preceding articles shall be punished with the penalty of *arresto mayor*.

This provision is applicable to the person who shall make use of such false certificate knowingly.

CHAPTER V.—*Provisions applicable to the four preceding chapters.*

ART. 322. He who shall manufacture or introduce dies, seals, marks, or any other kind of tools or instruments whatsoever knowingly destined to the falsifications referred to in the preceding chapters of this title, shall be punished with the same pecuniary penalties and with the personal penalties next lower in degree than those respectively prescribed for falsifiers.

ART. 323. He who shall have in his possession any of the tools or instruments referred to in the preceding article, and should not give a satisfactory explanation as to their acquisition or preservation, shall be punished with the same pecuniary penalties and the personal penalties lower by two degrees than those corresponding to the falsification for which they are proper.

ART. 324. The official who, in order to execute any falsification to the prejudice of the State, of a corporation, or of an individual, in whose service he may be, shall make use of legitimate tools or instruments intrusted to him, shall incur the same pecuniary and personal penalties that correspond to the falsification committed, being imposed upon him in their maximum degree; and he shall furthermore incur a penalty of from temporary absolute disqualification in its maximum degree to perpetual absolute disqualification.

ART. 325. Those who without being included in the preceding article shall take possession of the legitimate tools or instruments mentioned in the same, and shall make use of them to execute any falsification to the prejudice of the State, corporation, or individual to whom they belong, shall incur the same pecuniary penalties and the personal penalties next lower in degree that correspond to the falsification committed.

ART. 326. If the profit which those guilty of the falsification punished in this title may have derived, or which they proposed to gain, can be estimated, there shall be imposed upon them a fine of an amount equal up to three times that of such profit, unless the maximum thereof were less than the minimum penalty prescribed for the crime, in which case the latter shall be applied.

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CHAPTER VI.—*Fraudulent concealment of property or industry, false testimony, and false accusation and denunciation.*

ART. 327. He who, upon being questioned by the competent administrative official, shall conceal all or part of his property, or the trade or industry in which he is engaged, for the purpose of eluding thereby the payment of the taxes that ought to be paid upon the former or for the latter, shall incur a fine of an amount equal to up to five times the value of the taxes which he ought to have paid, but in no case shall it be less than 325 pesetas.

ART. 328. He who, in a criminal cause, shall give false testimony against the accused shall be punished:

1. With the penalty of *cadena temporal* in its maximum degree to *cadena perpetua*, if the accused should have been in such cause sentenced to the penalty of death, and it should have been carried out.

2. With the penalty of *cadena temporal*, if the accused should have been condemned in the cause to *cadena perpetua* and should have begun to undergo said penalty.

3. With the penalty of *presidio mayor*, if the accused should have been condemned in the cause to *cadena perpetua* and should not have begun to undergo the same.

4. With the penalty of *presidio correccional*, in its maximum degree to that of *presidio mayor* in its medium degree, if the accused should have been condemned in the cause to suffer any other corporal punishment and should have begun to undergo the same.

5. With the penalty of *presidio correccional* in its medium degree to *presidio mayor* in its minimum degree, if the accused should have been condemned in the cause to any other corporal penalty and should not have begun to undergo the same.

6. With the penalties of *presidio correccional* in its medium and maximum degrees and a fine of from 625 to 6,250 pesetas, if the accused should have been sentenced in the cause to a correctional penalty and should have begun to undergo the same.

7. With the penalties of *presidio correccional* in its minimum and medium degrees and a fine of from 375 to 3,750 pesetas, if the accused should have been sentenced in the cause to a correctional penalty and should not have begun to undergo the same.

8. With the penalties of *arresto mayor* in its maximum degree to *presidio correccional* in its minimum degree and a fine of from 325 to 3,250 pesetas, if the accused should have been condemned to a light penalty and should have begun to undergo the same.

9. With the penalties of *arresto mayor* and a fine of from 325 to 3,250 pesetas, if the accused should have been condemned to suffer a light penalty and should not have begun to undergo the same.

ART. 329. He who, in a criminal cause, shall give false testimony in favor of the accused shall be punished with the penalties of *arresto mayor* in its maximum degree to *prisión correccional* in its medium degree and a fine of from 375 to 3,750 pesetas, if the cause were for a crime; and with that of *arresto mayor* if it were for a misdemeanor.

ART. 330. The penalty of *arresto mayor* in its minimum and medium degrees shall be imposed on the person who, in a criminal cause for a crime, shall give false testimony that neither prejudices nor favors the accused.

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ART. 331. False testimony given in a civil cause shall be punished with the penalty of *arresto mayor* in its maximum degree to *presidio correccional* in its medium degree and a fine of from 625 to 6,250 pesetas.

If the amount of the claim should not exceed 625 pesetas, the penalties shall be those of *arresto mayor* and a fine of from 625 to 6,250 pesetas.

ART. 332. The penalties of the preceding articles are applicable in their maximum degree to the experts who testify falsely in judicial proceedings.

ART. 333. Whenever the false statement of the witness or expert shall have been given on account of subornation, the penalties shall be those next higher in degree to those respectively fixed in the preceding articles, there being imposed furthermore a fine of an amount equal up to three times that promised or the value of the gift.

The latter shall be confiscated should it have been delivered to the person suborned.

ART. 334. When the witness or expert without essentially perverting the truth shall distort it by his reticence or inexact statements the penalties shall be:

1. A fine of from 375 to 3,750 pesetas should such falsification take place in a criminal cause; and

2. From 325 to 3,250 pesetas if it should take place in a cause of a misdemeanor or in a civil action.

ART. 335. He who shall knowingly offer perjured witnesses or false documents in a judicial proceeding shall be punished as guilty of false testimony.

ART. 336. The crime of false accusation or denunciation is committed by falsely imputing to any person acts which, if they were true, would constitute a crime that would give rise to proceedings ex officio, if the imputation were made before an administrative or judicial official who would be obliged to proceed to its investigation or punishment by reason of his office.

The denouncer or accuser, however, shall not be proceeded against unless by virtue of a final sentence or writ, equally final, of the court which took cognizance of the crime imputed, dismissing the complaint.

The latter shall proceed ex officio against the denouncer or accuser, provided that the principal cause should show sufficient grounds for instituting a new action.

ART. 337. A person guilty of false accusation or denunciation shall be punished with the penalty of *presidio correccional* in its medium and maximum degrees, if the crime imputed were grave; with that of *prisión correccional* in its minimum and medium degrees, if the crime imputed were "less grave;" with that of *arresto mayor*, if the imputation should have been a misdemeanor; and with the additional imposition in each case of a fine of from 625 to 6,250 pesetas.

CHAPTER VII.—*Usurpation of office, rank, and titles, and improper use of names, dress, insignia, and decorations.*

ART. 338. He who, without warrant or legitimate cause, shall exercise acts pertaining to an authority or public official, attributing to himself an official character, shall be punished with the penalty of *prisión correccional* in its minimum and medium degrees.

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ART. 339. He who, attributing to himself the rank of professor, shall publicly perform acts belonging to a faculty, which can not be filled without an official title, shall incur the penalty of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree.

ART. 340. He who shall usurp the character which would enable him to exercise the functions belonging to ministers of a religion that has adherents in the land, or should perform said functions, shall incur the penalty of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree.

ART. 341. He who shall assume and publicly attribute to himself titles of nobility that do not belong to him shall incur a fine of from 625 to 6,250 pesetas.

ART. 342. He who shall publicly use an assumed name shall incur the penalty of *arresto mayor* in its minimum and medium degrees and a fine of from 325 to 3,250 pesetas.

If the purpose of the use of the assumed name were the concealment of any crime, the evasion of a penalty, or the causing of any prejudice to the State or to individuals, there shall be imposed on the culprit the penalties of *arresto mayor* in its medium and maximum degrees and a fine of from 375 to 3,750 pesetas.

Notwithstanding the provisions of this article, the use of an assumed name may be temporarily authorized by the superior administrative authority for sufficient cause.

ART. 343. The public official who, in the duties belonging to his office, shall attribute to any person, in connivance with him, titles of nobility, or a name that does not belong to him, shall incur a fine of from 375 to 3,750 pesetas.

ART. 344. He who shall publicly and unlawfully wear a uniform or dress belonging to an office which he does not hold, or of a class to which he does not belong, or of a rank not his own, or insignia or decorations that he is not authorized to wear, shall be punished with the penalty of a fine of from 325 to 3,250 pesetas.

TITLE V.—VIOLATION OF THE LAWS RELATING TO INTERMENTS, VIOLATION OF SEPULCHERS, AND OFFENSES AGAINST PUBLIC HEALTH.[a]

CHAPTER I.—*Violation of laws relating to interment and violation of sepulchers.*

ART. 345. He who shall conduct or cause to be conducted an interment in contravention to the provisions of the laws or regulations with regard to the time, place, and other formalities prescribed for interments, shall incur the penalties of *arresto mayor* and a fine of from 375 to 3,750 pesetas.

ART. 346. He who shall violate sepulchers or graves, committing any acts whatsoever directly tending to detract from the respect due the memory of the dead, shall be sentenced to the penalties of *arresto mayor* and a fine of from 325 to 3,250 pesetas.

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[a] G. O. No. 69, Apr. 2, 1900, and Circular No. 16, Apr. 9, 1900, headquarters, Department of Porto Rico.

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CHAPTER II.—*Offenses against public health.*[a]

ART. 347. He who, without having been duly authorized, shall manufacture substances injurious to health, or chemical products capable of causing great destruction, for the purpose of dealing therein, or who shall send them out, or sell or deal in them, shall be punished with the penalties of *arresto mayor* and a fine of from 625 to 6,250 pesetas.

ART. 348. He who, being authorized to deal in substances which might be injurious to health, or chemical products of the kind mentioned in the preceding article, shall transmit them or supply them without complying with the formalities prescribed in the respective regulations, shall be punished with the penalties of *arresto mayor* and a fine of from 325 to 3,250 pesetas.

ART. 349. Pharmacists who shall send out adulterated medicines, or shall substitute certain ones for others, or shall dispense them without complying with the formalities prescribed in the laws and regulations, shall be punished with the penalties of *arresto mayor*, in its maximum degree to *prisión correccional* in its minimum degree and a fine of from 325 to 3,250 pesetas.

If by reason of the sending out of such medicines the death of a person should have resulted, the penalty of *prisión correccional* in its medium and maximum degrees, and a fine of from 625 to 6,250 pesetas shall be imposed upon the culprit.

ART. 350. The provisions of the two preceding articles are applicable to those who deal in the substances or products mentioned therein, and the employees of the pharmacists, if they should be the culprits.

ART. 351. He who shall exhume or transfer human remains, in violation of the regulations and other sanitary provisions, shall incur the penalty of a fine of from 325 to 3,250 pesetas.

ART. 352. He who shall alter beverages or articles of food destined for public consumption by any composition whatever noxious to health, or who shall sell spoiled goods, or who shall manufacture or sell objects whose use would be necessarily injurious to health, shall be punished with the penalties of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree and a fine of from 325 to 3,250 pesetas.

The adulterated goods and the articles injurious to health shall always be destroyed.

ART. 353. The penalty prescribed in the foregoing article shall also be imposed—

1. Upon a person who shall secrete or remove articles intended for destruction or disinfection, with the object of selling or buying them.

2. Upon a person who shall throw into a spring, cistern, or river the water of which is used for drinking purposes, any object which should make the water injurious to health.

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[a] See G. O. 151, Sept. 27, 1899, and G. O. 87, Apr. 25, 1900, headquarters, Department of Porto Rico, pp. 729 and 731.

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TITLE VI.—GAMBLING AND RAFFLES.[a] [b]

ART. 354. The bankers and proprietors of houses where games of chance, stakes, or hazard are played, shall be punished with the penalty of *arresto mayor* and a fine of from 625 to 6,250 pesetas, and in case of a repetition with those of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree and a fine double the above mentioned.

The players who assemble at the houses referred to shall be punished with those of *arresto mayor* in its minimum degree and a fine of from 325 to 3,250 pesetas.

In case of repetition, with that of *arresto mayor* in its medium degree and double the fine.

ART. 355. The managers of and circulators of tickets in unauthorized lotteries or raffles shall be punished with the penalty of *arresto mayor* in its minimum and medium degrees and a fine of from 325 to 3,250 pesetas.

Those who use fraudulent devices to insure winning in games of chance or raffles shall be punished as swindlers.

ART. 356. The money or other articles and the instruments and tools used in gambling or raffles shall be confiscated.

TITLE VII.—OFFENSES COMMITTED BY PUBLIC EMPLOYEES IN THE DISCHARGE OF THEIR DUTIES.

CHAPTER I.—*Dereliction of duty.*

ART. 357. The judge who shall knowingly pass an unjust sentence upon a guilty person in a criminal prosecution for crime, shall incur the penalty imposed by such sentence, if it should have been executed, and in addition that of temporary absolute disqualification in its maximum degree up to perpetual absolute disqualification.

ART. 358. The judge who shall knowingly pass an unjust sentence upon a guilty person, if it should not have been put into execution, shall be punished with the penalty next lower in degree than that which he had imposed by such unjust sentence, if the crime were a grave crime, and with that next lower by two degrees than the sentence imposed if the crime were less grave.

In all the cases of this article there shall also be imposed on the culprit the penalty of temporary special disqualification in its maximum degree to perpetual special disqualification.

ART. 359. If the unjust sentence should be knowingly passed upon a criminal in a trial for a misdemeanor, the penalties shall be those of *arresto mayor* and temporary special disqualification in its maximum degree to perpetual special disqualification.

ART. 360. The judge who in a criminal prosecution shall knowingly pronounce an unjust sentence in favor of a criminal, shall incur the penalty of *prisión correccional* in its minimum and medium degrees and temporary special disqualification in its maximum degree to perpetual special disqualification if the cause were for a grave

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[a] In re betting on prize fights, see G. O. 54, headquarters, Department of Porto Rico, Mar. 12, 1900, p. 730.

[b] See G. O. No. 171, headquarters, Department of Porto Rico, Oct. 26, 1899.

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crime, and that of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree and the same disqualification, if the prosecution were for a less grave crime, and that of *arresto mayor* in its minimum degree and suspension, if the prosecution were for a misdemeanor.

ART. 361. The judge who shall knowingly render an unjust judgment in a civil cause shall incur the penalties of *arresto mayor* in its medium degree to *prisión correccional* in its minimum degree, and temporary special disqualification in its maximum degree to perpetual special disqualification.

ART. 362. The judge who, on account of inexcusable negligence or ignorance, shall render judgment or pass sentence in a civil or criminal case that is manifestly unjust, shall incur the penalty of temporary special disqualification in its maximum degree to perpetual special disqualification.

ART. 363. The judge who shall knowingly pronounce an unjust interlocutory decree shall incur the penalty of suspension.

ART. 364. The judge who shall refuse to pass upon a cause, under pretext of obscurity, insufficiency, or silence of the law, shall be punished with the penalty of suspension.

The judge guilty of malicious delay in the administration of justice shall incur the same penalty.

ART. 365. The public official who shall knowingly render or advise an unjust interlocutory decree or decision of administrative litigation or in a matter merely administrative, shall incur the penalty of temporary special disqualification in its maximum degree up to perpetual special disqualification.

The public official who shall render or advise, through inexcusable negligence or ignorance, a manifestly unjust interlocutory decree or decision in a matter of administrative litigation, or merely administrative, shall be punished with the same penalty.

ART. 366. The public official who, neglecting the duties of his office, shall maliciously fail to move the prosecution and punishment of delinquents shall incur the penalty of temporary special disqualification in its maximum degree to perpetual special disqualification.

ART. 367. The attorney or solicitor who, in malicious abuse of his profession or through inexcusable negligence or ignorance, shall prejudice his client or disclose his secrets of which he had gained knowledge in the course of his professional duties shall be punished with a fine of from 625 to 6,250 pesetas.

ART. 368. The attorney or solicitor who, having been retained to defend the cause of one party, shall subsequently, without his consent, defend the opposite side in the same action or give counsel to the same, shall be punished with the penalties of temporary special disqualification and a fine of from 325 to 3,250 pesetas.

CHAPTER II.—*Faithlessness in the custody of prisoners.*

ART. 369. The public official guilty of connivance in the escape of a prisoner whose conveyance and custody may have been instrusted to him shall be punished—

1. In case the fugitive should have been finally sentenced to undergo any penalty, with that lower than the same by two degrees and that of temporary special disqualification in its maximum degree to perpetual special disqualification.

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2. With the penalty lower by three degrees than that prescribed by law for the crime for which the fugitive was being tried, should he not as yet have been finally condemned, and with that of temporary special disqualification.

ART. 370. The individual who, being in charge of the conveyance or custody of a prisoner or person under arrest, shall commit any of the crimes mentioned in the preceding article, shall be punished with the penalties next lower in degree than those prescribed for public officials.

CHAPTER III.—*Faithlessness in the custody of documents.*

ART. 371. The public official who shall steal, destroy, or hide documents or papers intrusted to him by virtue of his office, shall be punished:

1. With the penalties of *prisión mayor* and a fine of from 625 to 6,250 pesetas, provided that a grave injury to a third person or the public interests has resulted from his action.

2. With *prisión correccional* in its minimum and medium degrees and a fine of from 325 to 3,250 pesetas, if the injury to the third person or to the public interests were not grave.

In either case there shall furthermore be imposed the penalty of temporary special disqualification in its maximum degree to perpetual special disqualification.

ART. 372. The public official who, having charge of the custody of papers or effects sealed by the authorities, should break the seals, or consent that they be broken, shall be punished with the penalties of *prisión correccional* in its minimum and medium degrees, temporary special disqualification in its maximum degree to perpetual special disqualification, and a fine of from 625 to 6,250 pesetas.

ART. 373. The public official who, not being included in the foregoing article, should open, or consent to the opening, without proper authorization, of closed papers or documents whose custody may have been intrusted to him, shall incur the penalties of *arresto mayor*, temporary special disqualification, and a fine of from 325 to 3,250 pesetas.

The penalties prescribed in the three preceding articles are also applicable to ecclesiastics and to individuals intrusted temporarily with the transmission or custody of documents or papers, by commission of the government or of officials to whom they may have been intrusted by virtue of their office.

CHAPTER IV.—*Violation of secrets.*

ART. 374. A public official who shall reveal the secrets of which he may have knowledge by virtue of his office, or who shall wrongfully deliver papers or copies of papers which he may have in his charge and that should not be made public, shall incur the penalties of suspension in its minimum and medium degrees and a fine of 325 to 3,250 pesetas.

If serious injury to the public interest should be caused by the revelation or the delivery of the papers, the penalties shall be temporary special disqualification in its maximum degree to perpetual special disqualification and *prisión correccional* in its medium and maximum degrees.

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ART. 375. A public official who, by virtue of his office, knows the secrets of an individual and reveals them, shall incur the penalties of suspension, *arresto mayor*, and a fine of from 325 to 3,250 pesetas.

CHAPTER V.—*Disobedience and refusal of cooperation.*

ART. 376. The judicial or administrative officials who shall openly refuse to duly fulfill the sentences, decisions, or orders of a superior authority, issued within the limits of its respective competency, and vested with the legal formalities, shall incur the penalties of temporary special disqualification and a fine of from 375 to 3,750 pesetas.

Notwithstanding the provisions of the preceding paragraph, public officials shall not incur criminal liability for not enforcing an administrative order constituting a manifest, clear, and definite violation of a constitutional precept.

Neither shall public officials exercising authority incur criminal liability who do not enforce an order of the same character wherein any other law is manifestly, clearly, and definitely violated.

ART. 377. The official who may, for any reason whatsoever (not, however, one of those specified in the second paragraph of the preceding article), should have suspended the execution of the orders of his superiors, and should disobey after the former may have disapproved such suspension, shall suffer the penalty of perpetual special disqualification and *prisión correccional* in its minimum and medium degrees.

ART. 378. The public official who, upon the request of the competent authority, does not furnish him the proper cooperation in the administration of justice or other public service, shall incur the penalty of suspension in its minimum and medium degrees, and a fine of from 325 to 3,250 pesetas.

If grave injury to the public interest or to a third person should result from such omission, the penalties shall be those of perpetual special disqualification and a fine of from 375 to 3,750 pesetas.

ART. 379. He who shall refuse or decline to occupy an elective public office without presenting a legal excuse to the proper authority, or after the excuse shall have been rejected, shall incur a fine of from 375 to 3,750 pesetas.

The same penalty shall be incurred by any juror who shall wilfully fail to perform his duties without an accepted excuse; and the expert and the witness who likewise deliberately fail to appear before a court to give their testimony when they have been duly cited to do so.

CHAPTER VI.—*Anticipation, prolongation, and abandonment of public duties.*

ART. 380. He who shall enter upon the performance of a public employment or office without having taken the oath in due form or given the bond required by law, shall be suspended from said employment or office until he complies with the respective formalities, and shall incur a fine of from 325 to 3,250 pesetas.

ART. 381. The public official who shall continue in the exercise of his employment, office, or commission after he must cease therein in

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accordance with the laws or regulations or special provisions relating thereto, shall be punished with the penalties of temporary special disqualification in its minimum degree and a fine of from 325 to 3,250 pesetas.

ART. 382. The public official guilty of any of the offenses punished in the two preceding articles who should have received any fees or emoluments by reason of his office or commission before he was qualified to exercise them or after he should have discontinued therein shall be furthermore condemned to restore such sums, with a fine of from 10 to 50 per cent of their amount.

ART. 383. The public official who shall abandon his employment without his resignation having been accepted, to the injury of the public interests, shall be punished with the penalty of suspension in its medium and maximum degrees.

If the abandonment of such employment were made in order not to hinder, prosecute, or punish any of the crimes included in titles 1 and 2 of Book II of this code, there shall be imposed upon the culprit the penalty of *prisión correccional* in its minimum to its medium degree, and that of *arresto mayor* if his purpose were not to prevent, prosecute, or punish any other kind of crime.

CHAPTER VII.—*Usurpation of prerogatives and illegal appointments to office.*

ART. 384. The public official who shall infringe upon the prerogatives of the legislative power, either by prescribing regulations or general provisions in excess of his powers or by annulling or suspending the execution of a law, shall incur the penalty of temporary special disqualification and a fine of from 375 to 3,750 pesetas.

ART. 385. The judge who shall arrogate to himself prerogatives belonging to the administrative authorities, or shall prevent the latter from lawfully exercising their own, shall be punished with the penalty of suspension.

The same penalty shall be incurred by every official of the administrative branch of the Government who shall arrogate to himself judicial prerogatives or prevent the execution of an interlocutory decree or decision rendered by a competent judge.

ART. 386. The public official who, being legally warned by writ of inhibition, should continue to act before the question of jurisdiction has been decided, shall be punished with a fine of from 325 to 3,250 pesetas.

ART. 387. The administrative or military official who shall give orders or intimations to a judicial authority relating to causes or questions in controversy whose cognizance or decision is of the exclusive competency of courts of justice, shall incur the penalties of suspension in its minimum and medium degrees and a fine of from 625 to 6,250 pesetas.

ART. 388. The ecclesiastic who, when requested by the competent court, shall refuse to forward to the same the files requested for the decision of an appeal made to the civil jurisdiction from a decision rendered by an ecclesiastical court, shall be punished with the penalty of temporary special disqualification.

A second offense shall be punished with that of perpetual special disqualification.

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ART. 389. The public official who knowingly shall recommend or nominate for public office a person who does not have the legal qualifications, shall be punished with the penalty of suspension and a fine of from 325 to 3,250 pesetas.

CHAPTER VIII.—*Abuses against chastity.*

ART. 390. The public official who shall solicit a woman who has applications before him awaiting his decision, or on which he has to make a report or consult his superior, shall be punished with the penalty of temporary special disqualification.

ART. 391. The warden of the prison who shall solicit a woman in his custody shall be punished with the penalty of *prisión correccional* in its medium and maximum degrees.

If the person solicited were the wife, daughter, sister, or a relation by affinity within the same degrees of a person whom he had under his charge, the penalty shall be *prisión correccional* in its minimum to its medium degree.

In every case he shall in addition incur the penalty of temporary special disqualification in its maximum degree to perpetual special disqualification.

CHAPTER IX.—*Bribery.*

ART. 392. The public official who shall receive, directly or through an intermediary, a gift or present, or who shall accept offers or promises for his committing, in the discharge of his office, an act constituting a crime, shall be punished with the penalties of *prisión correccional* in its minimum to its medium degree and a fine of from an amount equal up to one three times the value of the gift, without prejudice to the imposition of the penalty pertaining to the crime committed in consideration of the gift or promise, should it have been executed.

ART. 393. The public official who shall receive, directly or through an intermediary, any gift or present, or who shall accept any offer or promise for the execution of an unjust act relating to the discharge of his office, not constituting a crime, and who shall execute it, shall incur the penalty of *presidio correccional* in its minimum and medium degrees and a fine of an amount equal up to one three times the value of the gift. If the unjust act was not actually executed, the penalties of *arresto mayor* in its maximum degree to *presidio correccional* in its minimum degree shall be imposed and a fine of an amount equal up to one double the value of the gift.

ART. 394. When the purpose of the gift received or promised were that the public official should abstain from performing an act which he should perform in the exercise of the duties of his office, the penalties shall be those of *arresto mayor* in its medium to its maximum degree and a fine of an amount equal up to one three times the value thereof.

ART. 395. The provisions of the three preceding articles shall be applicable to jurors, arbiters, arbitrators, experts, mediators (hombres buenos), or any persons whatsoever filling a public office.

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ART 396. The persons criminally liable for the crimes mentioned in the foregoing articles shall incur, in addition to the penalties prescribed therein, that of temporary special disqualification.

ART. 397. The public official who shall accept presents given him in consideration of his official position shall be punished with suspension in its minimum and medium degrees and public censure.

A89. 398. Those who shall corrupt public officials with gifts, presents, offers, or promises, shall be punished with the same penalties as those imposed on the officers suborned, excepting that of disqualification.

ART. 399. If the bribe should be offered in a criminal cause in favor of the criminal, by his spouse or of any ascendant, descendant, brother, or relation by affinity within the same degrees, there shall only be imposed upon the culprit a fine equivalent to the value of the gift or promise.

ART. 400. In every case the gifts or presents shall be confiscated.

CHAPTER X.—*Misappropriation of public funds.*

ART. 401. The public official who, by reason of his duties, has in his charge public funds or property, and who should take or consent that others should take the same shall be punished:

1. With the penalty of *arresto mayor* in its maximum degree to *presidio correccional* in its minimum degree if the amount taken should not exceed 125 pesetas.

2. With that of *presidio correccional* in its medium and maximum degrees if it should have exceeded 125 and did not exceed 6,250 pesetas.

3. With that of *presidio mayor* if it exceeded 6,250 and did not exceed 125,000 pesetas.

4. With that of *cadena temporal* if it exceeded 125,000 pesetas.

In any case with that of temporary special disqualification in its maximum degree to perpetual absolute disqualification.

ART. 402. The public official who, through inexcusable abandonment or negligence, should enable the peculation of public funds or property, referred to in Nos. 2, 3, and 4 of the foregoing article, by another person, shall incur the penalty of a fine equivalent to the value of the money or property misappropriated.

ART. 403. The official who, to the detriment or hindrance of the public service, shall apply to his own or to foreign purposes the money or property placed under his charge, shall be punished with the penalties of temporary special disqualification and a fine of from 20 to 50 per cent of the amount diverted.

If restitution be not made the penalties prescribed in article 401 shall be imposed on him.

If such unlawful use of the funds were without detriment to or hindrance of the public service, he shall incur the penalties of suspension and a fine of from 5 to 25 per cent of the amount diverted.

ART. 404. The public official who shall give to the funds or property that he administers a public application different from that to which they were destined, shall incur the penalties of temporary disqualification and a fine of from 5 to 50 per cent of the amount diverted, if detriment to or hindrance of the public service to which they were assigned should result therefrom, and otherwise, that of suspension.

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ART. 405. The public official who, as a holder of State funds, should be obliged to make a payment and should not do so, shall be punished with the penalties of suspension and a fine of from 5 to 25 per cent of the amount unpaid.

This provision is applicable to the public official who, when required by order of the competent authority, should refuse to deliver anything placed under his custody or administration.

The fine shall in such case be graduated according to the value of the thing and shall not be less than 325 pesetas.

ART. 406. The provisions of this chapter are applicable to those who for any reason whatsoever have charge of funds, income, rents, or properties, provincial or municipal, or belonging to an educational or charitable institution, and to the administrators or depositaries of funds attached, sequestrated or deposited by a public authority, even though they belong to individuals.

CHAPTER XI.—*Frauds and illegal exactions.*

ART. 407. The public official who, while taking part, by reason of his office, in any commission of supply, contracts, settlements or liquidations of public effects or funds, shall act therein in concert with the persons interested or speculators, or employ any other artifice to defraud the State, shall incur the penalties of *presidio correccional* in its medium and maximum degrees, and temporary special disqualification in its maximum degree to perpetual special disqualification.

ART. 408. The public official who shall become personally interested, directly or indirectly, in any kind of contract or transaction whatsoever in which he has to take part by reason of his office, shall be punished with the penalties of temporary special disqualification and a fine of from 10 to 50 per cent of the value of the interest which he may have had in the transaction.

This provision is applicable to experts, referees, and private accountants, with regard to the property or things in the appraisal, partition, or award of which they may have taken part; and to guardians of persons and property, and to executors with regard to those of their wards or testamentary beneficiaries.

ART. 409. The public official who shall directly or indirectly exact higher fees than those to which he is entitled by reason of his office, shall be punished with a fine of from double to four times the amount exacted.

A person habitually guilty of this offense shall, in addition, incur the penalty of temporary special disqualification.

ART. 410. The public official who, taking advantage of his office, shall commit any of the crimes specified in Chapter IV, Section II, Title XIII, of this book, shall incur in addition to the penalties prescribed therein that of temporary special disqualification in its maximum degree to perpetual special disqualification.

CHAPTER XII.—*Transactions forbidden public employees.*

ART. 411. The judges, officials of the department of public prosecution (ministerio fiscal), the military, administrative or financial heads of a province or district, with the exception of mayors, who, during the discharge of their office, shall directly or indirectly take part in

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exchange, trade, or gain transactions within the limits of their jurisdiction or command, with regard to objects not the product of their own property, shall be punished with the penalties of suspension and a fine of from 625 to 6,250 pesetas.

This provision is not applicable to those who shall invest their funds in the stock of a bank or any enterprise or company, provided they do not hold therein any office or exercise any direct intervention, either administrative or financial.

CHAPTER XIII.—*General provision.*

ART. 412. For the purposes of this and of the preceding Titles of this book, every person shall be considered a public official who, by the immediate provisions of the law and by popular election or appointment by competent authority, takes part in the exercise of public functions.

TITLE VIII.—CRIMES AGAINST PERSONS.

CHAPTER I.—*Parricide.*

ART. 413. He who shall kill his father, mother, or son, whether legitimate or illegitimate, or any other of his ascendants or descendants, or his spouse, shall be punished as a parricide, with the penalty of *cadena perpetua* to death.

CHAPTER II.—*Assassination.*

ART. 414. He who, without being included in the preceding article, shall kill any person, is guilty of assassination if the deed is attended by any of the following circumstances: (1) With treachery; (2) for price or promise of reward; (3) by means of flood, fire, or poison; (4) with deliberate premeditation; (5) with vindictiveness, by deliberately and inhumanly increasing the suffering of the person attacked.

A person guilty of assassination shall be punished with the penalty of *cadena temporal* in its maximum degree to death.

ART. 415. The slave who shall kill his master or his master's spouse, or any of the ascendants or descendants of the same living in his household, with the attendance of any of the circumstances specified in the preceding article, shall be punished with the penalty of *cadena perpetua* to death.

The same penalty shall be imposed on the freedman who shall kill his patron, if any of the aforesaid circumstances are attendant.

CHAPTER III.—*Homicide.*

ART. 416. He is guilty of homicide who, not being covered by the provisions of article 413, shall kill another without the accompaniment of any of the attendant circumstances specified in article 414.

A person guilty of homicide shall be punished with *reclusión temporal.*

ART. 417. A slave who, without the attendance of the circumstances specified in article 414, shall kill his master or master's spouse, or any of the ascendants or descendants of the same living in his household, or the person charged by his master with his supervision, custody, or

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direction, shall be punished with the penalty of *reclusión temporal* in its medium degree to *reclusión perpetua.*

The homicide committed by a freedman upon the person of his patron shall be punished with the same penalty.

ART. 418. When several persons are struggling and fighting together confusedly and tumultuously, a death resulting therefrom, the author of which can not be ascertained but those who inflicted serious wounds are found, the latter shall be punished with the penalty of *prisión mayor.*

Should it not be proven who inflicted such serious wounds upon the person assaulted, there shall be imposed upon everybody who used violence against his person, that of *prisión correccional* in its medium and maximum degrees.

ART. 419. He who gives his assistance to another to commit suicide shall be punished with the penalty of *prisión mayor;* if his assistance should extend to the point of himself taking such person's life, he shall be punished with the penalty of *reclusión temporal.*

CHAPTER IV.—*Provisions common to the three preceding chapters.*

ART. 420. The courts, taking into consideration the circumstances of the deed, may punish the frustrated crimes of parricide, assassination, and homicide with a penalty lower by one degree than that which ought to be applied according to article 64.

They may also reduce by one degree, according to the circumstances of the deed, the penalty applicable to an attempt, according to article 65.

ART. 421. The act of discharging a firearm at any person shall be punished with the penalty of *prisión correccional* in its minimum and medium degrees, if all the circumstances of the deed necessary to constitute a frustrated crime or attempt at parricide, assassination, homicide, or any other crime for which a higher penalty is prescribed by any of the articles of this code should not be attendant.

CHAPTER V.—*Infanticide.*

ART. 422. The mother who, for the purpose of hiding her shame, shall kill her child before it has reached the age of three days, shall be punished with the penalty of *prisión correccional* in its medium and maximum degrees.

The father or mother of a woman who, in order to hide their daughter's shame, commit this crime, shall be punished with the penalty of *prisión mayor.*

With the exception of these cases, he who kills a newly born infant shall incur, according to the cases, the penalties prescribed for parricide or assassination.

CHAPTER VI.—*Abortion.*

ART. 423. He who shall intentionally cause an abortion shall be punished:

1. With the penalty of *reclusión temporal,* if violence should have been used against the person of the pregnant woman.

2. With that of *prisión mayor* if, even though violence should not have been used, he acted without the consent of the woman.

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3. With that of *prisión correccional* in its medium and maximum degrees, if the woman should consent thereto.

ART. 424. He who shall occasion a miscarriage by his violence, without the intention of causing it, shall be punished with *prisión correccional* in its minimum and medium degrees.

ART. 425. The woman who shall cause her own abortion, or consent to another person doing it, shall be punished with *prisión correccional* in its medium and maximum degrees.

If she should do so to hide her shame, she shall incur the penalty of *prisión correccional* in its minimum and medium degrees.

ART. 426. A physician who, by wrongful use of his skill, shall cause the abortion, or cooperate therein, shall respectively incur in their highest degrees the penalties prescribed in article 423.

The pharmacist who, without the proper doctor's prescription, shall sell a medicine for producing an abortion, shall incur the penalties of *arresto mayor* and a fine of from 325 to 3,250 pesetas.

CHAPTER VII.—*Personal injuries inflicted by violence (lesiones).*

ART. 427. He who shall purposely castrate another shall be punished with the penalty of *reclusión temporal* to *reclusión perpetua.*

ART. 428. Any other mutilation of the person likewise purposely committed shall be punished with the penalty of *reclusión temporal.*

ART. 429. He who shall wound, bruise, or maltreat another shall be punished as guilty of causing serious physical injuries:

1. With the penalty of *prisión mayor* if, as the result of the injuries, the person assaulted became an imbecile, impotent, or blind.

2. With that of *prisión correccional* in its medium and maximum degrees if, as a result of such injuries, the person assaulted should have lost an eye or any principal member, or should have been hindered in the use thereof, or become useless for the occupation in which, up to that time, he had been habitually engaged.

3. With the penalty of *prisión correccional* in its minimum and medium degrees if, as the result of such injuries, the person assaulted should have been deformed, or had lost a member not a principal one, or should have had it rendered useless, or should have been, for a period of more than ninety days, ill, or disabled for his usual occupation.

4. With that of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree if such injuries should have occasioned the assaulted party an illness or disability for work lasting more than thirty days.

If the act should be committed against any of the persons specified in article 413, or with any of the attendant circumstances specified in article 414, the penalties shall be those of *reclusión temporal* in its medium and maximum degrees, in the case of No. 1 of this article, and that of *prisión correccional* in its maximum degree to *prisión mayor* in its minimum degree in the case of No. 2; that of *prisión correccional* in its medium and maximum degrees in the case of No. 3; and that of *prisión correccional* in its minimum and medium degrees in the case of No. 4 of the same.

The injuries which a father may cause his child in too severe a correction are not included in the preceding paragraph.

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Neither are those which, by way of correction, masters, or the persons under whose charge they have placed their slaves, may cause them, provided that said correction does not exceed the limit of punishment authorized by the regulations.

ART. 430. If the master should inflict or cause to be inflicted upon a slave the injuries included in Nos. 1 and 2 of the preceding article, the civil liability which he shall incur, according to article 17, shall be extended to the obligatory manumission of the injured person and to the obligation to support him during his life.

If the injuries which the master should thus inflict or cause to be inflicted should be of those included in Nos. 3 and 4 of the preceding article, the civil liability shall be extended to the forced alienation of the slave to a person to whom the author of the crime is not bound by any tie of relationship within the fourth degree.

ART. 431. The penalties mentioned in the preceding article are respectively applicable to the person who, without intent to kill, shall cause another any grave injury by knowingly administering to him noxious substances or beverages, or by taking advantage of his credulity or feebleness of mind.

ART. 432. Injuries not included in the preceding articles, which shall render the injured person unable to work for eight days or more, or require the care of a physician for a similar period, shall be less grave, and shall be punished with *arresto mayor* or banishment, and a fine of from 325 to 3,250 pesetas, in the discretion of the courts.

When the less grave injury should be inflicted with manifest intent of outrage or under humiliating circumstances, in addition to *arresto mayor* a fine of from 325 to 3,250 pesetas shall be imposed.

ART. 433. Less grave injuries inflicted on parents, ascendants, guardians of persons or property, teachers, or persons holding public rank or authority, masters, patrons, overseers or major-domos, shall be punished always with *prisión correccional* in its minimum and medium degrees.

ART. 434. When, in the quarrelsome brawl defined in article 418, grave injuries should be inflicted upon any person, and it can not be ascertained who caused them, there shall be imposed the penalty immediately lower than that prescribed for the injuries inflicted, upon everyone who shall appear to have exercised any violence upon the person of the party assaulted.

ART. 435. He who shall mutilate himself or give his consent to his mutilation, for the purpose of securing his exemption from military service, and shall have been declared exempt from such service on account of said mutilation, shall incur the penalty of *presidio correccional* in its medium and maximum degrees.

ART. 436. He who should disable another, with his consent, for the purpose mentioned in the preceding article, shall incur the penalty of *presidio correccional* in its minimum and medium degrees.

If he should have done the deed for remuneration, the penalty shall be that next higher in degree than that prescribed in the foregoing paragraph.

If the person guilty of this crime were the father, mother, spouse, brother, or brother-in-law of the person mutilated, the penalty shall be that of *arresto mayor* in its medium degree to *prisión correccional* in its minimum degree.

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CHAPTER VIII.—*General provisions.*

ART. 437. The husband who should surprise his wife in adultery and shall kill her or her paramour in the act, or shall inflict upon them any kind of grave physical injury, shall be punished with the penalty of banishment.

If he should inflict upon them injuries of any other kind he shall be exempt from punishment.

These rules are applicable under similar circumstances to fathers with regard to their daughters under 23 years of age and their seducers while the former are living under the paternal roof.

The benefit of this article shall not be extended to those who may have instigated or facilitated the prostitution of their wives or daughters.

CHAPTER IX.—*Duelling.*[a]

ART. 438. The authority who shall receive information that a duel is being arranged shall proceed to the detention of the challenger and that of the challenged party, if he shall have accepted the challenge, and shall not set them at liberty until they give their words of honor to desist from their purpose.

He who shall break his word, challenging his adversary anew, shall be punished with the penalties of temporary absolute disqualification from public office and *confinamiento.*

He who shall accept the challenge under similar circumstances shall be punished with that of banishment.

ART. 439. He who shall kill his adversary in a duel shall be punished with the penalty of *prisión mayor.*

If he inflicts upon him the injuries described in number 1, of article 429, with that of *prisión correccional* in its medium and maximum degrees.

In any other case whatsoever the penalty of *arresto mayor* shall be imposed upon the combatants, even though no injury should result.

ART. 440. In place of the penalties prescribed in the preceding article there shall be imposed, in case of homicide, that of *confinamiento;* that of banishment in case of the physical injuries included in number 1, of article 429, and that of a fine of from 325 to 3,250 pesetas in all other cases:

1. Upon the challenged person who should fight because he had not obtained from his adversary an explanation of the reasons for the duel.

2. Upon the challenged person who should fight because of his adversary having refused to accept adequate explanations or proper satisfaction for the offense given.

3. Upon a person insulted who should fight because he had not been able to obtain from the offender an adequate explanation or proper satisfaction demanded.

ART. 441. The penalties prescribed in article 439 shall be imposed in their maximum degrees:

1. Upon the person who shall challenge another to a duel without explaining to his adversary, if he should demand them, the reasons therefor.

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[a] See G. O. 129, headquarters Department of Porto Rico, Aug. 24, 1899, p. 728. For prize fighting, see G. O. 54, headquarters Department of Porto Rico, Mar. 12, 1900, p. 730.

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soluble, shall incur the penalty of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree and public censure.

ART. 457. Those who in any way should offend modesty or good morals by acts of grievous scandal or enormity, not expressly included in other articles of this code, shall incur the penalties of *arresto mayor* and public censure.

ART. 458. Those who shall preach or proclaim, with publicity and scandal, doctrines contrary to public morals, shall incur the penalty of a fine of from 325 to 3,250 pesetas.

CHAPTER IV.—*Seduction and corruption of minors.*

ART. 459. The seduction of a virgin over 12 and under 23 years of age, committed by a public authority, priest, servant, domestic, guardian, or teacher in charge of her education or guardianship, under any name whatsoever, shall be punished with the penalty of *prisión correccional* in its minimum and medium degrees.

Whosoever shall commit incest with his sister or a descendant of his, even though she were older than 23 years of age, shall incur the same penalty.

Seduction, when committed with fraud by any other person on a woman over 12 years of age but under 23, shall be punished with the penalty of *arresto mayor*.

Any other unchaste abuse committed by the same persons and under similar circumstances shall be punished with the same penalty.

ART. 460. If the seduction were committed by a slave on the person of his mistress, the daughter or granddaughter of his master, or a woman of the family of any one of them related within the fourth degree of relationship and living in their household, the penalty shall be that of *prisión correccional* in its maximum degree to *prisión mayor* in its minimum and medium degrees.

ART. 461. An unchaste abuse committed by a slave, through the employment of fraud, upon a person over 12 years of age but under 23, belonging to the family of his master within the fourth degree of relationship, shall be punished with the penalty of *prisión correccional* in its minimum and medium degrees.

ART. 462. Whosoever shall habitually, or taking advantage of his authority or another's trust, promote or facilitate the prostitution or corruption of minors to satisfy the lusts of another, shall be punished with the penalty of *prisión correccional* in its minimum and medium degrees; and temporary absolute disqualification if he were an authority.

CHAPTER V.—*Abduction (rapto).*

ART. 463. The abduction of a woman, executed against her will and with unchaste designs, shall be punished with the penalty of *reclusión temporal*.

The same penalty shall be imposed in all cases if the person abducted were under 12 years of age.

ART. 464. If the crime foreseen in the preceding article should be committed by a slave against the person of his mistress, or the wife, daughter, or granddaughter of his master, or a woman belonging to the family of any of them, within the fourth degree of relationship

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and living in their household, he shall be punished with the penalty of *reclusión temporal* in its medium degree to *reclusión perpetua.*

ART. 465. The abduction of a virgin under 23 years of age and over 12, executed with her assent, shall be punished with the penalty of *prisión correccional* in its minimum and medium degrees.

The same crime committed by a slave against any of the persons mentioned in the preceding article shall be punished with the penalty of *prisión correccional* in its maximum degree to *prisión mayor* in its minimum degree.

ART. 466. Those guilty of the crime of abduction who shall not give the whereabouts of the person abducted, or satisfactory explanation of her death or disappearance, shall be punished with the penalty of *cadena perpetua.*

CHAPTER VI.—*Provisions common to the preceding chapters.*

ART. 467. Criminal proceedings for seduction can only be instituted on the complaint of the offended person, or her parents, grandparents, or guardian.

In order to proceed in cases of rape and in those of abduction committed with unchaste design, the denunciation of the interested party, of her parents, grandparents, or guardians, shall suffice, even though they do not present a formal petition to the judge.

If the person injured should, by reason of her age or mental condition, lack the requisite personality to appear in court, and should, besides, be wholly unprotected, not having parents, grandparents, brothers, or guardian of person or property to denounce the crime, the *procurador síndico* or the public prosecutor may do so, acting on the strength of public rumor.

In all the cases of this article the express or implied pardon of the offended party shall extinguish penal action or the penalty if it should have been already imposed on the culprit.

The pardon shall never be presumed, except by the marriage of the offended party with the offender.

ART. 468. Those guilty of rape, seduction, or abduction shall be condemned also, by way of indemnification—

1. To endow the injured woman, if she were unmarried or a widow.
2. To emancipate her if she were under his servitude.
3. To acknowledge the offspring if the character of its origin should not prevent it.
4. In all cases to support the offspring.

ART. 469. The ascendants, guardians of persons or property, masters, patrons, teachers, and any other persons whatsoever, who, taking advantage of their authority or trust, cooperate as accomplices in the perpetration of the crimes included in the four preceding chapters, shall be punished as principals therein.

Teachers, or those charged in any manner whatsoever with the education or management of the young, shall, furthermore, be condemned to the penalty of temporary special disqualification in its maximum degree to perpetual special disqualification.

ART. 470. Those included in the preceding article, and any others whatsoever, guilty of the corruption of minors in the interest of a third person, shall be punished with the penalties of interdiction in the right to exercise guardianship and to be members of the family council.

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TITLE X.—CRIMES AGAINST HONOR.

CHAPTER I.—*Calumny.*

ART. 471. Calumny is the false imputation of a crime of those subject to prosecution at the instance of the Government (*de oficio*).

ART. 472. Calumny put into writing and made public shall be punished with the penalties of *prisión correccional* in its minimum and medium degrees and a fine of from 1,250 to 12,500 pesetas if a grave crime be charged, and with those of *arresto mayor* and a fine of from 625 to 6,250 pesetas if the crime charged be less grave.

ART. 473. When the calumny is not made public and put into writing it shall be punished—

1. With the penalty of *arresto mayor* in its maximum degree and a fine of from 625 to 6,250 pesetas, if a grave crime be charged.

2. With that of *arresto mayor* in its minimum degree and a fine of from 325 to 3,250 pesetas, if a less grave crime be charged.

ART. 474. A person accused of calumny shall be exempt from all punishment if he shall prove the criminal act charged.

The sentence establishing the calumny shall be published in the official periodicals if the calumniated person should request it.

CHAPTER II.—*Contumely.*

ART. 475. Contumely includes every expression pronounced or action executed with a view to dishonoring or holding up to contempt another person.

ART. 476. The following are grave acts of contumely:

1. The imputation of a crime of those subject to prosecution at the instance of the Government (*de oficio*).

2. That of a vice or a lack of morality the consequence of which might considerably damage the fame, credit, or interest of the person offended.

3. Acts of contumely which by their nature, occasion, or circumstance are ignominious in public opinion.

4. Those which reasonably deserve the classification of grave acts in view of the condition, dignity, and personal circumstances of the offended party and the offender.

ART. 477. Grave acts of contumely put into writing and made public shall be punished with the penalties of banishment in its medium to its maximum degree and a fine of from 625 to 6,250 pesetas.

If said circumstances should not be attendant they shall be punished with the penalties of banishment in its minimum to its medium degree and a fine of from 325 to 3,250 pesetas.

ART. 478. Slight acts of contumely shall be punished with the penalties of *arresto mayor* in its minimum degree and a fine of from 325 to 3,250 pesetas, if they are in writing and should be made public.

If these circumstances are not attendant they shall be punished as misdemeanors.

ART. 479. A person charged with acts of contumely shall not be allowed to furnish evidence tending to prove the truth of his imputations, unless they shall have been directed at public officers about matters concerning the performance of their duties.

In such case the defendant shall be acquitted if he prove the truth of his imputations.

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CHAPTER III.—*General provisions.*

ART. 480. The crime of calumny or contumely may be committed not only openly, but by means of allegories, caricatures, emblems, or allusions.

ART. 481. Calumny and contumely shall be considered as having been committed in writing and made public when they are circulated through the medium of printed, lithographed, or engraved papers, by placards or lampoons posted in public places, or by manuscript communicated to more than ten persons.

ART. 482. Any person accused of the crime of calumny or contumely, covert or equivocal, who shall refuse to furnish the court with a satisfactory explanation thereof, shall be punished as guilty of open calumny or contumely.

ART. 483. The editors or printers of newspapers in which the calumnies or contumelies may have been published, shall insert therein, within the period fixed by law, or, in the absence thereof, by the court, the apology or the condemnatory sentence, if the offended party should so require.

ART. 484. An action for calumny or contumely may be brought by the ascendants, descendants, spouses, and brothers of the deceased offended party, provided the calumny or contumely reflects on them, and in any case by the heir.

ART. 485. The action for calumny or contumely shall also be proper when they should have been committed by means of publications in a foreign country.

ART. 486. No one can institute an action for calumny or contumely committed in judicial proceedings without the previous permission of the judge or tribunal having cognizance thereof.

No one shall be punished for calumny or contumely unless on complaint of the offended party, except when the offense is directed against the public authority, corporations, or determined classes in the State, and in the cases prescribed in Chapter V of Title III of this book.

A person guilty of calumny or contumely against individuals shall be relieved from the penalty imposed by the pardon of the offended party.

For the purposes of this article the sovereigns and princes of friendly or allied nations, their diplomatic agents, and foreigners with a public character, that, according to treaties, should be included in this provision, shall be considered as authorities.

A special initiative of the government must precede any action relating to the cases mentioned in the foregoing paragraph.

TITLE XI.—CRIMES AGAINST THE CIVIL STATUS OF PERSONS.

CHAPTER I.—*Fictitious representations of childbirth and usurpation of civil status.*

ART. 487. Fictitious representations of childbirth and the substitution of one child for another shall be punished with the penalties of *presidio mayor* and a fine of from 625 to 6,250 pesetas.

The same punishments shall be imposed on any person who should hide or expose a legitimate child with the intent to make him lose his civil status.

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ART. 488. The physician or public official who, in taking advantage of his profession or office, should cooperate in the commission of any of the crimes mentioned in the foregoing article shall incur the same penalties, and, furthermore, that of temporary special disqualification.

ART. 489. He who shall usurp the civil status of another shall be punished with the penalty of *presidio mayor*.

CHAPTER II.—*Celebration of illegal marriages.*

ART. 490. Any person who shall contract a second or subsequent marriage without the prior marriage being lawfully dissolved, shall be punished with the penalty of *prisión mayor*.

ART. 491. He who, notwithstanding the existence of an impediment for which no dispensation can be had, shall contract a marriage, shall be punished with the penalty of *prisión correccional* in its medium and maximum degrees.

ART. 492. He who shall contract a marriage, notwithstanding the existence of an impediment for which dispensation could be had, shall be punished with a fine of from 325 to 3,250 pesetas.

If through his own fault he shall not, after dispensation within the period fixed by the court, have caused the marriage to be validated, he shall be punished with the penalty of *prisión correccional* in its medium and maximum degrees, from which penalty he shall be released when the marriage is made valid.

ART. 493. He who shall cause, through surprise or deceit, a parish priest to take part in the celebration of an illegal marriage, valid, however, under the provisions of the church, shall be punished with the penalty of *prisión correccional*.

If he should have caused him to take part through violence or intimidation, he shall be punished with that of *prisión menor*.

ART. 494. Any minor who shall contract a marriage without the consent of his or her parents, or of the persons who for such purposes stand in their stead, shall be punished with *prisión correccional* in its minimum and medium degrees.

The culprit shall be pardoned as soon as the parents or persons referred to in the foregoing paragraph approve the marriage contracted.

ART. 495. The widow who shall marry before three hundred and one days have elapsed from the death of her husband, or before she is confined, if she were pregnant at the time of his death, shall incur the penalties of *arresto mayor* and a fine of from 125 to 1,250 pesetas.

The same penalty shall be incurred by a woman whose marriage should have been declared null and void if she should marry before her confinement or before three hundred and one days have elapsed from her legal separation.

ART. 496. He who, without previous dispensation, shall contract a marriage with one of his adopted children or descendants shall be punished with the penalty of *arresto mayor*.

ART. 497. The guardian who, before the judicial approval of his accounts, should contract a marriage with or should give his consent to his children or descendants contracting it with the person whose wardship he should have or should have had, unless the father of the latter should have duly authorized such marriage, shall be punished

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with the penalties of *prisión correccional* in its medium and maximum degree and a fine of from 325 to 3,250 pesetas.

ART. 498. The ecclesiastical or civil authority who shall perform a marriage forbidden by law, or in regard to which there is any impediment which can not be removed by dispensation, shall be punished with the penalty of suspension in its medium and maximum degrees and a fine of from 625 to 6,250 pesetas.

If the impediment could be removed by dispensation the penalties shall be those of banishment in its minimum degree and a fine of from 325 to 3,250 pesetas.

ART. 499. In all the cases of this chapter the person who contracted marriage by deceit shall be adjudged to endow, according to his means, the woman who contracted the marriage in good faith.

TITLE XII.—CRIMES AGAINST LIBERTY AND SECURITY.

CHAPTER I.—*Unlawful detentions.*

ART. 500. Any private person who shall lock up or detain another, or in any way deprive him of his liberty, reserving the provisions of article 502, shall be punished with the penalty of *prisión mayor*.

He who shall furnish a place for the commission of the crime shall incur the same penalty.

If the culprit should release the person locked up or detained within three days after his detention had commenced, without obtaining the object he had in view and without the commencement of criminal proceedings, the penalty shall be *prisión correccional* in its minimum and medium degrees and a fine of from 325 to 3,250 pesetas.

ART. 501. The crime referred to in the preceding article shall be punished with the penalty of *reclusión temporal*—

1. If the imprisonment or detention should have lasted more than twenty days.

2. If it should have been committed by the false assumption of public authority.

3. If grave physical injuries should have been inflicted on the person imprisoned or detained or if he should have been threatened with death.

ART. 502. Any person who, cases permitted by law being excepted, shall without sufficient reason apprehend or detain a person in order to turn him over to the authorities, shall be punished with the penalties of *arresto menor* and a fine of from 325 to 3,250 pesetas.

This article is not applicable to those apprehending the slaves or serfs of others, who are fugitives, in order to deliver them to their masters or the authorities, in the cases prescribed in the regulations, provided that the delivery be made within the term of seventy-two hours after the capture.

Fugitives shall be considered those of whose flight notice shall have been given by their masters or patrons to the local authorities, by publication in the newspapers, or that are found three leagues away from the farms upon which they were employed, without a permit from their master, manager, or overseer or with a permit whose term of license had already expired.

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CHAPTER II.—*The abduction of infants.*

ART. 503. The abduction of a child under 7 years of age shall be punished with the penalty of *cadena temporal.*

ART. 504. The same penalty shall be incurred by any person who, being in charge of the person of a minor, shall not deliver him to his parents or guardians or give a satisfactory explanation concerning his disappearance.

ART. 505. He who shall induce a minor, but over the age of 7, to abandon the house of his parents, guardians, or persons in charge of him, shall be punished with the penalties of *arresto mayor* and a fine of from 325 to 3,250 pesetas.

CHAPTER III.—*The abandonment of children.*

ART. 506. He who shall abandon a child under 7 years of age shall be punished with the penalties of *arresto mayor* and a fine of from 325 to 3,250 pesetas.

If on account of the circumstances of the abandonment the death of a child is caused, the culprit shall be punished with the penalty of *prisión correccional* in its medium and maximum degrees.

If the child's life should have only been endangered, the punishment shall also be that of *prisión correccional*, but in its minimum and medium degrees.

The provisions of the two foregoing paragraphs must be considered without prejudice to the punishment of the deed as may be proper if it should constitute a graver crime.

ART. 507. He who being intrusted with the rearing or education of a minor should place him in charge of any public institution or of another person, without the assent of the person who had confided said minor to him, or of the public authorities in his absence, shall be punished with a fine of from 325 to 3,250 pesetas.

CHAPTER IV.—*Provision common to the three preceding chapters.*

ART. 508. He who shall unlawfully detain another person or abduct a child under the age of 7 years, and should not give an account of his whereabouts, or should not give evidence of having set him free, shall be punished with the penalty of *cadena temporal* in its maximum degree to *cadena perpetua.*

He who shall abandon an infant under 7 years of age shall incur the same penalty, if he does not give evidence that he abandoned the infant without committing another crime.

CHAPTER V.—*Forcible entry of dwellings.*

ART. 509. Any private individual who shall enter another's dwelling against the will of the tenant thereof shall be punished with *arresto mayor* and a fine of from 325 to 3,250 pesetas.

If the deed were committed with violence or intimidation, the penalties shall be *prisión correccional* in its medium and maximum degrees and a fine of from 325 to 3,250 pesetas.

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ART. 510. The provisions of the foregoing article are not applicable to a person who enters another's dwelling in order to avoid a grave injury to himself, to the tenants, or to a third person; nor to him who should enter the same in order to render some service to humanity or justice.

ART. 511. The provisions of this chapter are not applicable to cafés, taverns, inns, and other public houses while they are open.

CHAPTER VI.—*Threats and acts of compulsion.*

ART. 512. He who shall threaten another or his family with regard to their persons, honor, or property with an injury amounting to a crime shall be punished—

1. With the penalty next lower in degree than that prescribed by law for the crime with which the person is threatened, if the threat should have been made by exacting a sum of money or imposing some other condition, even though not illegal, provided the culprit attained his purpose. If the purpose were not attained, with the penalty lower by two degrees.

The penalty shall be imposed in its maximum degree if the threats should be made in writing or through the medium of an emissary.

2. With the penalties of *arresto mayor* and a fine of from 325 to 3,250 pesetas, if the threat should have been unconditional.

ART. 513. Threats of an injury not constituting a crime, made in the manner mentioned in No. 1 of the foregoing article, shall be punished with the penalty of *arresto mayor*.

ART. 514. In all the cases of the two foregoing articles the person making the threat may also be sentenced to give security not to offend the person threatened, and in default thereof to the penalty of banishment.

ART. 515. Any person who, without lawful authorization, shall with violence prevent another from doing what is not prohibited by law, or shall compel him to do what he does not wish, whether just or unjust, shall be punished with the penalties of *arresto mayor* and a fine of from 325 to 3,250 pesetas.

ART. 516. He who with violence shall appropriate a thing belonging to his debtor in order to pay himself therewith shall be punished with the penalties of *arresto mayor* in its minimum degree and a fine equivalent to the value of the thing, but in no case lower than 325 pesetas.

CHAPTER VII.—*Discovery and revelation of secrets.*

ART. 517. He who in order to discover another's secrets shall take possession of his papers or letters and divulge such secrets, shall be punished with the penalties of *prisión correccional* in its minimum and medium degrees and a fine of from 325 to 3,250 pesetas.

If he does not disclose them the penalties shall be *arresto mayor* and a fine of from 325 to 3,250 pesetas.

This provision is not applicable to husbands, parents, guardians, or persons acting in their stead with regard to papers or letters belonging to their wives, children, or minors under their custody.

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ART. 518. The manager, clerk, or servant who in such capacity may be informed of his employer's secrets, and shall divulge them, shall be punished with the penalties of *arresto mayor* and a fine of from 325 to 3,250 pesetas.

ART. 519. The manager, employee, or laborer in a factory or other industrial concern who, to the prejudice of the owner's interests, shall disclose the secrets of his industry, shall be punished with the penalties of *prisión correccional* in its minimum and medium degrees and a fine of from 325 to 3,250 pesetas.

TITLE XIII.—CRIMES AGAINST PROPERTY.

CHAPTER I.—*Robbery.*

ART. 520. Those who, with intent of profiting thereby, shall take possession of the personal property of another with violence or intimidation of the person or by employing force with regard to the personal property, are guilty of the crime of robbery.

ART. 521. A person guilty of robbery with violence or intimidation of the person shall be punished:

1. With the penalty of *cadena perpetua* to death if on account or on the occasion of the robbery there results homicide.

2. With the penalty of *cadena temporal* in its medium degree to *cadena perpetua*, if the robbery should be accompanied by violation or mutilation caused purposely, or if on account or on the occasion of the robbery any of the injuries punished in No. 1 of article 429 should be inflicted, or should the robbed person be detained for ransom or for more than one day.

3. With the penalty of *cadena temporal* if on the same account or occasion some of the injuries punished in No. 2 of the article mentioned in the foregoing number should be inflicted.

4. With the penalty of *presidio mayor* in its medium degree to *cadena temporal* in its minimum degree if the violence or intimidation that should have attended the robbery were of a gravity manifestly unnecessary for its execution; or if in the perpetration of the crime injuries of the kind mentioned in Nos. 3 and 4 of said article 429 should have been inflicted by the delinquents upon persons not responsible for the crime.

5. With the penalty of *prisidio correccional* to *presidio mayor* in its medium degree in other cases.

ART. 522. If the crimes referred to in Nos. 3, 4, and 5 of the foregoing article should have been committed in an uninhabited place and by a gang, or by attacking a moving train, or by entering passenger compartments, or by surprising passengers in any manner whatsoever within the cars, the penalty shall be imposed on the culprits in the maximum degree.

Upon the chief of the gang, if it should be wholly or partially armed, there shall be imposed, in the same cases, the penalty next higher.

ART. 523. A gang exists if more than three armed malefactors unite in the robbery.

The malefactors present at the commission of a robbery in an uninhabited place and by a gang shall be punished as principals in any of

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the outrages committed by the gang if there is no evidence that they endeavored to prevent them.

The malefactor who habitually travels with the gang shall be presumed to have been present at all the attempts committed by it, unless there be proof to the contrary.

ART. 524. The attempt and frustrated crime of robbery, committed with the crime mentioned in No. 1 of article 521, shall be punished with the penalty of *cadena temporal* in its maximum degree to *cadena perpetua*, unless the homicide committed should deserve a higher penalty according to the provisions of this code.

ART. 525. He who in order to defraud another should force him by violence or intimidation to sign, execute, or deliver a public instrument or document shall be punished as guilty of robbery with the penalties respectively prescribed in this chapter.

ART. 526. Those who should with arms rob an inhabited house or public building, or one dedicated to religious worship, shall be punished with the penalty of *presidio mayor* in its medium degree to *cadena temporal* in its minimum degree, if the value of the articles should exceed 1,250 pesetas and the malefactors should have entered the house or building where the robbery was committed, or any of its dependencies, by one of the following means:

1. By wrongful entry.[a]
2. By breaking through a wall, ceiling, or floor, or by forcing a door or window.
3. By making use of false keys, picklocks, or other similar instruments.
4. By breaking open doors, wardrobes, etc., coffers, or any other kind of furniture, or locked or sealed objects, or by taking the same away to be broken or forced open outside the place of robbery.
5. By making use of fictitious names or simulation of authority.

If the malefactors should not carry arms, and the extent of the robbery should exceed 1,250 pesetas, the penalty next lower shall be imposed.

The same rule shall be observed if the malefactors do carry arms but the extent of the robbery does not exceed 1,250 pesetas.

If they do not carry arms, nor does the extent of the robbery exceed 1,250 pesetas, the penalty prescribed in the two preceding paragraphs shall be imposed on the culprits in its minimum degree.

ART. 527. If the crimes referred to in the foregoing articles should have been committed in an uninhabited place and by a gang, or if the property robbed should have been articles dedicated to religious worship, the penalty shall be imposed on the culprits in its maximum degree.

ART. 528. Any lodging that shall constitute the dwelling place of one or more persons shall be considered an inhabited house, even if they should be accidentally absent therefrom when the robbery takes place.

As dependencies of an inhabited house or public building, or one dedicated to religious worship, shall be considered: Its courts, corrals, shops, granaries, mows, stables, stalls, and other divisions or inclosures contiguous to the building, having interior communication therewith, so that the whole constitutes one entire place.

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[a] See article 10, No. 23.

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The orchards and other grounds destined to the cultivation and products of the soil shall not be included in the foregoing paragraph, even if they are fenced in, adjoin the building and have interior communication therewith.

ART. 529. If the robbery referred to in article 526 should have been committed in a dependency of an inhabited house, public building, or one dedicated to religious worship, by means of the culprits entering the same by climbing an exterior wall, and should have been limited to the taking of nutritious grains, products, or wood, and the value of the things robbed should not exceed 75 pesetas, there shall be imposed on the culprits the penalty of *arresto mayor* in its medium degree to *prisión correccional* in its minimum degree.

ART. 530. The robbery committed in an uninhabited place, or in a building that is not one of those mentioned in the first paragraph of article 526 if the value of the objects robbed should exceed 1,250 pesetas, shall be punished with the penalty of *presidio correccional* in its medium and maximum degrees, provided that any of the following circumstances be attendant:

1. Wrongful entry.
2. The breaking of walls, roofs, or floors, the forcing of outer doors or windows.
3. Having made use of false keys, picklocks, or other similar instruments to enter the place of the robbery.
4. The forcing of doors, wardrobes, etc., coffers, or any other kind of furniture, or locked or sealed objects.
5. The removal of the locked or sealed objects referred to in the preceding paragraph, even though they be broken into outside the place of the robbery.

If the value of the objects robbed does not exceed 1,250 pesetas, the penalty next lower shall be imposed.

ART. 531. In the cases of the preceding article, a robbery not involving a value of more than 75 pesetas shall be punished with *arresto mayor* in its medium and maximum degrees.

If the things robbed were of those mentioned in article 529, the penalty next lower shall be imposed.

ART. 532. The robbery referred to in articles 529, 530, and 531, shall be punished with the penalty next higher if the culprit were a recidivist two or more times.

ART. 533. He who shall have in his possession picklocks or other tools specially designed to commit the crime of robbery, and shall not give satisfactory explanation as to the manner he acquired or kept them, shall be punished with the penalty of *arresto mayor* in its maximum degree to *presidio correccional* in its minimum degree.

The same penalty shall be incurred by those who manufacture said tools. If they be locksmiths, the penalty of *presidio correccional* in its medium and maximum degrees shall be imposed.

ART. 534. The following are considered as false keys:

1. The tools referred to in the preceding article.
2. True keys stolen from the owner.
3. Any others not used by the owner in opening the lock the criminal may have tampered with.

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CHAPTER II.—*Theft.*

ART. 535. The following are guilty of theft:

1. Those who with intent of gain and without violence or intimidation against the person or force against things shall take another's personal property without the owner's consent.

2. Those who finding something lost and, knowing who its owner is, appropriate it with the intent of profit.

3. Those committing damage to property, who remove or utilize the result or the object of the damage so caused, except in the cases provided for in Nos. 1, 2, and 3 of article 615; No. 1 of article 618 and articles 619, 621, and 626.

ART. 536. Those guilty of theft shall be punished:

1. With the penalty of *presidio correccional* in its medium and maximum degrees, if the value of the stolen property should exceed 6,250 pesetas.

2. With the penalty of *presidio correccional* in its minimum and medium degrees, should it not exceed 6,250 pesetas and be more than 1,250.

3. With *arresto mayor* in its medium degree to *presidio correccional* in its minimum degree, should it not exceed 1,250 pesetas and be more than 250 pesetas.

4. With *arresto mayor* to its fullest extent, should it be more than 25 but not exceed 250 pesetas.

5. With *arresto mayor* in its minimum and medium degrees, if it should not exceed 25 pesetas, or even though it should exceed said amount, if the theft is of nutritious grains, fruits, or wood, provided it does not exceed 50 pesetas.

ART. 537. The following shall also be punished with the penalty of *arresto mayor* in its minimum and medium degrees:

He who shall enter an inclosed estate or a place where trespass is forbidden, to hunt or fish, employing violence or intimidation against the person or force against things.

He who under the same conditions shall hunt or fish on an estate or fields without the permission of the owner, employing means forbidden by the ordinances.

If the circumstances mentioned in the two foregoing paragraphs shall occur simultaneously, the culprit shall be punished with the penalty of *arresto mayor* in its maximum degree.

ART. 538. The theft shall be punished with penalties next higher in degree than those respectively prescribed in the two preceding articles—

1. If the stolen objects were things dedicated to worship or if the deed were committed during a religious ceremony or in an edifice dedicated to the celebration thereof.

2. If the thief were a domestic or if the deed were committed through a gross breach of trust.

3. If the culprit were a recidivist two or more times.

CHAPTER III.—*Appropriation of slaves belonging to others and flight of slaves.*

This chapter includes articles 539 to 544, which are not applicable, slavery having been abolished in Cuba by the law of February 13, 1880, and "patronage" by the royal decree of October 7, 1886.

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CHAPTER IV.—*Usurpation.*

ART. 545. Whosoever with violence or intimidation against persons shall occupy any real property or usurp a property right of another shall incur, in addition to the penalties which he may have incurred for the violences committed by him, a fine of from 50 to 100 per cent of the profit he may have derived therefrom, never being less than 325 pesetas.

Should it not be possible to estimate said profit, a fine of from 325 to 3,250 pesetas shall be imposed.

ART. 546. Whosoever shall alter boundaries or landmarks of towns or estates or any other marks intended to fix the limits of adjoining estates, shall be punished with a fine of from 50 to 100 per cent of the profit he may have derived or might have been able to derive therefrom.

Should it be impossible to estimate said profit, a fine of from 325 to 3,250 pesetas shall be imposed upon him.

CHAPTER V.—*Frauds.*

SECTION I.—*Absconding and criminal failure and insolvency.*

ART. 547. He who shall abscond with his property for the purpose of defrauding his creditors shall be punished with the penalty of *presidio mayor*, if he were a merchant, and otherwise with that of *presidio correccional* in its maximum degree to *presidio mayor* in its medium degree.

ART. 548. The bankrupt merchant who should be declared guilty of fraudulent insolvency in accordance with the Code of Commerce, shall be punished with the penalty of *presidio correccional* in its maximum degree to *presidio mayor* in its medium degree.

ART. 549. The bankrupt merchant who should be declared guilty of culpable insolvency through any of the causes mentioned in article 1005 of the Code of Commerce, shall incur the penalty of *prisión correccional* in its minimum and medium degrees.

Bankrupt merchants who should not have kept books of account in the manner and with all the requisites prescribed in the second section of Title II, Book I, of the Code of Commerce, if, owing to the defects and omissions therein, prejudice should have resulted to a third person, and those who should not have declared themselves in bankruptcy within the period and in the manner prescribed in article 1017 of said code, shall be punished with the penalty of *arresto mayor.*

ART. 550. In the cases of the two preceding articles, if the loss occasioned to the creditors should not reach 10 per cent of the respective credits, the penalties next lower than those prescribed in said articles shall be imposed upon the bankrupt.

If the loss should exceed 50 per cent, the penalties prescribed in the said articles shall be imposed in their maximum degrees.

ART. 551. The penalties prescribed in the three preceding articles are applicable to merchants, even if not registered, if they are habitually engaged in trade.

ART. 552. Those who shall commit any of the acts mentioned in article 1010 of the Code of Commerce shall be punished as accomplices in the crime of fraudulent insolvency.

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ART. 553. The bankrupt not a merchant whose insolvency should be the result, in whole or in part, of any of the following causes, shall incur the penalty of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree:

1. To have had domestic personal expenses in excess of and out of proportion to his means, considering the circumstances of his rank and family.

2. To have lost in any kind of games sums in excess of what an orderly father of family should risk by way of recreation in that sort of entertainment.

3. To have suffered losses in heavy bettings, fictitious purchases and sales, or in any other exchange transactions whose success depends exclusively on chance.

4. To have disposed of goods at a notable loss whose purchase price was still unpaid.

5. To delay in declaring his bankruptcy when his liabilities are three times his assets.

ART. 554. The bankrupt, not a merchant, whose insolvency should have resulted in whole or in part from any of the following acts, shall incur the penalty of *presidio correccional* in its maximum degree to *presidio mayor* in its minimum degree:

1. From having included fictitious expenses, losses, or debts, or concealed properties or rights in the statement of liabilities, the report of his assets, or the reports presented by him to the judicial authority.

2. From having appropriated or diverted properties belonging to others which had been placed on deposit with him or given him on commission or for his management.

3. From having simulated the alienation or any encumbrance of, property, debts, or obligations.

4. From having acquired properties for a valuable consideration in the name of another person.

5. From having anticipated, to the prejudice of creditors, payments not due until a period after the declaration of bankruptcy.

6. From having diverted after the declaration of bankruptcy securities belonging to the assets.

ART. 555. The provisions contained in article 550 are applicable to the two preceding articles.

ART. 556. The following shall be punished as accomplices in the crime of fraudulent insolvency committed by a debtor not engaged in commerce who shall perform any of the following acts:

1. Enter into an understanding with the bankrupt who is not a merchant in order to create a fictitious liability as against him, or to increase any liability of his, or to alter its character or date, for the purpose of obtaining preference in fraud of the other creditors, even though this should take place before the declaration of bankruptcy.

2. Assist the bankrupt who is not a merchant in the concealment or conveyance of his property.

3. Conceal from the trustees of the bankrupt who is not a merchant the existence of property belonging to him which was in the possession of the culprit, or delivered to the bankrupt instead of to said trustees.

4. Make private agreements with the bankrupt who is not a merchant in fraud of other creditors.

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ART. 557. The penalties prescribed in this chapter shall be imposed in their maximum to their minimum degrees upon the bankrupt who is or is not a merchant who should not restore any deposit made with him under stress or necessity (*deposito miserable ó necesario*).

SECTION II.—*Swindles and other false pretenses.*

ART. 558. A person who shall defraud another in the substance, quantity, or quality of things he may deliver to him by virtue of an obligation shall be punished:

1. With the penalty of *arresto mayor* in its minimum and medium degrees, if the fraud should not exceed 250 pesetas in amount.

2. With that of *arresto mayor* in its medium degree to *presidio correccional* in its minimum degree if it should exceed 250 pesetas and not be more than 6,250 pesetas.

3. With that of *presidio correccional* in its minimum and medium degrees if it should exceed 6,250 pesetas.

ART. 559. The following shall incur the penalties of the preceding article:

1. He who shall defraud others by using a fictitious name, by assuming fictitious power, influence, or attributes, or by pretending to possess imaginary property, credit, commission, enterprises, or business, or by using any other similar deceit that is not one of those mentioned in the following cases.

2. The silversmiths and jewelers who shall commit a fraud by altering the quality, alloy, or weight of articles pertaining to their art or commerce.

3. The traders who shall defraud others by using short weights or measures in the sale of the objects of their traffic.

4. Those who shall commit a fraud under the false pretext of having had to pay an unlawful gratuity to public employees, without prejudice to the action for calumny pertaining to the latter.

The penalties shall be imposed in their maximum degrees on the persons mentioned in the three preceding numbers.

5. Those who, to the prejudice of another, shall appropriate or misapply any money, goods, or any kind of personal property which they may have received as a deposit on commission, administration, or in any other character producing the obligation to deliver or return the same, or who shall deny having received it.

The penalties shall be imposed in their maximum degrees in case of deposits made under stress or necessity.

6. Those who shall commit any fraud by taking advantage of another's signature in blank and by means thereof filling up any document to his prejudice, or that of a third person.

7. Those who shall commit fraud by causing another to subscribe a document by the use of deceit.

8. Those who shall employ fraud in gambling in order to insure winning.

9. Those who shall commit fraud by withdrawing, concealing, or destroying, in whole or in part, any process, record, document, or any other paper of any character whatsoever.

If the same crime should be committed without the intent to defraud, a fine of from 325 to 3,250 pesetas shall be imposed on the author.

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ART. 560. The crimes referred to in the three preceding numbers shall be punished with the penalty respectively higher by one degree, if the culprits should be two or more times recidivists in the same or a similar kind of crime.

ART. 561. He who, pretending to be the owner of real property, should convey, rent, encumber, or pledge it, shall be punished with the penalty of *arresto mayor* in its minimum and medium degrees, and a fine of from an amount equal up to three times the amount of the loss he may have caused.

The same penalty shall be incurred by the person who shall dispose of any property as free and clear knowing it to be encumbered.

ART. 562. The following shall incur the penalties prescribed in the foregoing article:

1. The owner of any personal property who shall abstract it from the person who has it legitimately in his possession to the prejudice of the same or of a third person.

2. He who shall execute a fictitious contract to the prejudice of another.

ART. 563. Those who shall commit any fraud with regard to literary or industrial property shall also incur the penalties prescribed in article 561.

ART. 564. A person who, by taking advantage of the inexperience or passions of a minor, should induce him to execute to his prejudice any obligation, discharge, or transfer of property rights, in consideration of a loan of money, a credit, or other personal property, whether the loan clearly appears or is clothed in another form, shall be punished with the penalties of *arresto mayor* and a fine of from 10 to 50 per cent of the amount of the obligation incurred by the minor.

ART. 565. He who shall defraud or prejudice another by employing any deceit not specified in the preceding articles of this section, shall be punished with a fine of an amount equal up to one double that of the loss occasioned, and in case of a repetition, with a fine of double the amount, and *arresto mayor* in its medium to its maximum degree.

CHAPTER VI.—*Plots to alter the prices of things.*

ART. 566. Those who shall request for a gift or promise in consideration of not taking part in a public auction, and those who shall attempt to keep away any bidders therefrom, by means of threats, gifts, promises, or any other artifice, for the purpose of altering the price to be obtained from the sale, shall be punished with a fine of from 10 to 50 per cent of the value of the things auctioned, unless they should have deserved a severer fine by reason of the threats or other means employed.

ART. 567. Those who wrongfully combine to enhance or lower the price of labor or regulate its conditions wrongfully, provided such combination has begun to be carried into effect, shall be punished with the penalty of *arresto mayor*.

This penalty shall be imposed in its maximum degree on the leaders and promoters of the combination, and on those who shall employ violence or threats to insure its success, unless they deserve a higher penalty by reason thereof.

ART. 568. Persons who, by spreading false rumors, or by using any other artifice, should succeed in altering the natural prices resulting

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from free competition in merchandise, stocks, public or private securities, or any other things which may be the subjects of trade, shall be punished with the penalties of *arresto mayor* and a fine of from 1,250 to 12,500 pesetas.

ART. 569. If the fraud mentioned in the foregoing article should relate to food stuffs or other objects of primary necessity, the penalty shall be imposed in its maximum degree.

For the imposition of this penalty it shall suffice that the combination should have commenced to be carried out.

CHAPTER VII.—*Pawnbroking establishments.*

ART. 570. A person who, being engaged in the business of making loans upon pledges, salaries, or wages, shall not keep books of account and enter therein, without leaving blank spaces or interlining, the amounts loaned, their terms or interest, the names and residences of those who receive them, the nature, quality, and value of the articles pledged and the other circumstances required by the regulations, shall be punished with a fine of from 1,250 pesetas to 12,500 pesetas.

ART. 571. A pawnbroker who shall not give a receipt for the pledge or security received shall be punished with a fine of from double to five times its value.

CHAPTER VIII.—*Arson and other malicious destruction of property.*

ART. 572. The following shall be punished with the penalty of *cadena temporal* in its maximum degree to *cadena perpetua:*

1. Those who shall set fire to an arsenal, dockyard, warehouse, establishment for the manufacture of gunpowder or military fireworks, park of artillery, archives, or general museum of the State.
2. Those who shall set fire to a moving passenger train or a vessel away from port.
3. Those who shall set fire in a populous place to a storehouse containing inflammables or explosives.
4. Those who shall set fire to a theater, church, or other edifice devoted to meetings, if a number of people shall have gathered therein.

ART. 573. Those who shall set fire to any edifice, farmhouse, hut, shed, or vessel in port, with knowledge that one or more persons were within the same, shall be punished with the penalty of *cadena temporal* to *cadena perpetua.*

ART. 574. The penalty of *cadena temporal* shall be imposed:

1. Upon those who shall set fire to a public edifice, if the damage caused exceeds 6,250 pesetas.
2. Upon those who shall set fire to an inhabited house or any edifice whatsoever, in which several persons habitually meet, not knowing whether or not there were people therein, or a moving freight train if the damage caused in said cases should also exceed 6,250 pesetas.

ART. 575. The following shall be punished with the penalty of *presidio mayor:*

1. Those who shall commit any of the crimes included in the preceding article, if the amount of the injury caused should not exceed 6,250 pesetas.

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2. Those who shall set fire to a house not destined for a dwelling or meeting place, but in a populous district, if the amount of the damage caused should exceed 6,250 pesetas.

3. Those who set fire to sugar mills, cane fields, or other similar plantations, if the damage caused should exceed 6,250 pesetas.

ART. 576. If the damage caused in the cases of Nos. 2 and 3 of the foregoing article should not exceed 6,250 pesetas, but should be more than 650, there shall be imposed upon the culprit the penalty of *presidio correccional* in its medium and maximum degrees.

If it should not exceed 650 pesetas the penalty of *presidio correccional* in its minimum and medium degrees shall be imposed.

ART. 577. The following shall be punished with the penalty of *presidio correccional* in its maximum degree to *presidio mayor* in its medium degree if the damage caused shall exceed 6,250 pesetas:

1. Those who shall set fire to an edifice used as a dwelling in an uninhabited place.

2. Those who shall set fire to grain, pastures, woods, or plantings.

ART. 578. If the damage caused in any of the cases of the foregoing article should exceed 650, but not be more than 6,250 pesetas, the penalty shall be that of *presidio correccional* in its medium degree to *presidio mayor* in its minimum degree.

ART. 579. If it should not have amounted to 650 pesetas, the penalty next lower by one degree shall be imposed, provided fire should have been set to a building; and that lower by two degrees if it should have been set to grain, pasture lands, woods, or plantings.

ART. 580. When, by reason of having set fire to grain, pasture lands, woods, or plantings, there should have been danger of its spreading, on account of other properties being adjacent to those on fire, there shall be imposed a penalty higher by one degree than that prescribed for the crime.

ART. 581. Setting fire to things not included in the preceding articles shall be punished:

1. With the penalty of *arresto mayor* in its medium and maximum degrees, if the damage caused did not exceed 125 pesetas.

2. With the penalty of *arresto mayor* in its maximum degree to *presidio correccional* in its minimum degree, if the damage caused should exceed 125 but not be more than 1,250 pesetas.

3. With that of *presidio correccional* in its minimum and medium degrees, if the damage caused should exceed 1,250 and not exceed 6,250 pesetas.

4. And with that of *presidio correccional* in its medium and maximum degrees if it should exceed 6,250 pesetas.

ART. 582. In case of fire having been set to huts, ricks, or sheds that are unoccupied, or to any other object whose value does not exceed 625 pesetas, at a time or under circumstances that manifestly exclude any danger of its spreading, the culprit shall not incur the penalties prescribed in this chapter, but those he may deserve for the damage caused, in accordance with the provisions of the following chapter.

ART. 583. The following shall, respectively, incur the penalties of this chapter: Those who shall cause destruction of property by the sinking or stranding of a vessel; by causing an inundation; the explo-

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sion of a mine or steam engine; by removing rails from a railroad; by changing maliciously the signals employed in the service of the latter for the safety of moving trains; by the destruction of telegraph wires and poles; and, in general, by the employment of any other agency or medium of destruction as powerful as those mentioned.

ART. 584. A person guilty of the burning or damage of another's property shall not be exempted from the penalties imposed in this chapter even though in order to commit the crime he may have burned or damaged property of his own.

ART. 585. If the things set on fire belonged exclusively to the incendiary, there shall be imposed upon him the penalty of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree, if the fire should either have been caused with intent to defraud the rights of a third person or to cause him any prejudice; or if, even without this intention, such prejudice had been caused him, or if the thing set on fire should have been a building in a populous spot.

CHAPTER IX.—*Damage to property.*

ART. 586. Those who cause any damage to property of another not specified in the preceding chapter, are guilty of injuries to property and subject to the penalties of this chapter.

ART. 587. Those shall be punished with the penalty of *prisión correccional* in its minimum and medium degrees who shall cause damage to property exceeding in amount 6,250 pesetas:

1. With the intention of hindering the free action of the authorities or in revenge for their decisions, whether the crimes were committed against public employees or against individuals who had assisted or could assist, as witnesses or in any other manner, in the enforcement or application of the laws.
2. By introducing in any manner whatsoever infection or contagion among cattle.
3. By employing poisonous or corrosive substances.
4. By a gang or in a deserted spot.
5. Within an office for the keeping of archives or registry.
6. Upon bridges, roads, promenades, or other places of common public use.
7. By ruining of the person injured.

ART. 588. He who, under any of the circumstances mentioned in the foregoing article, shall cause damage exceeding 125 pesetas but not more than 6,250 pesetas, shall be punished with the penalty of *arresto mayor*.

ART. 589. The burning or destruction of papers or documents, the value of which can be estimated, shall be punished according to the provisions of this chapter. If the value can not be estimated, with the penalties of *arresto mayor* in its maximum degree to *prisión correccional* in its medium degree and a fine of from 625 to 6,250 pesetas.

The provisions of this article are to be considered as applicable if the deed should not constitute another graver crime.

ART. 590. The damage to property not included in the preceding articles, amounting to more than 125 pesetas, shall be punished with a fine of an amount equal up to three times that of the damage, never being less than 200 pesetas.

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This determination is not applicable to damages caused by cattle and others, which must be classed as misdemeanors according to the provisions of Book III.

The provisions of this chapter shall only be applicable when a higher penalty is not proper for the crime according to the provisions of article 535.

CHAPTER X.—*General provisions.*

ART. 591. The following are exempt from criminal liability and subject only to civil liability for the thefts, frauds, or damages that they may reciprocally cause each other:

1. Spouses, ascendants, and descendants, or relations by affinity in the same line.
2. The widowed spouse, with regard to the things belonging to the deceased spouse while they have not passed into the possession of another.
3. Brothers and brothers-in-law, if they live together.

The exceptions of this article are not applicable to any strangers who shall share in the offense.

TITLE XI.—RECKLESS NEGLIGENCE.

ART. 592. He who shall execute through reckless negligence an act that, if done with malice, would constitute a grave crime, shall be punished with the penalty of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree, and with *arresto mayor* in its minimum and medium degrees if it shall constitute a less grave crime.

He who, in violation of the regulations, shall commit a crime through simple imprudence or negligence, shall incur the penalty of *arresto mayor* in its medium and maximum degrees.

In the application of these penalties the courts shall proceed according to their discretion, without being subject to the rules prescribed in article 80.

The provisions of this article shall not be applicable if the penalty prescribed for the crime is equal to or less than those contained in the first paragraph thereof, in which case the courts shall apply the next one thereto in the degree which they may consider proper.

Book III.—MISDEMEANORS AND THEIR PENALTIES.

TITLE I.—MISDEMEANORS AGAINST PUBLIC ORDER.

ART. 593. Whosoever shall throw stones at or soil statues or paintings, or cause any damage whatsoever to the streets, parks, gardens, or promenades or appliances for public lighting, or to objects of adornment or of public untility or amusement, even though belonging to individuals, shall be punished with a fine of from double to four times the amount of the damage caused, if the act itself should not, on account of its gravity, be included in Book II of this code.

The same penalty shall be incurred by those who in any manner whatsoever shall violate rules concerning the embellishment of cities.

ART. 594. The following shall be punished with the penalty of arrest of from one to ten days and a fine of from 15 to 125 pesetas:

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1. Those who shall disturb acts of worship, or offend the religious sentiments of those attending the same, in any manner not foreseen in Section III, Chapter II of Book II of this code.

2. Those who by exhibiting prints or engravings or by means of other acts shall offend against good morals and customs without committing a crime.

ART. 595. Those who, within towns or in a public or frequented place, shall discharge firearms, rockets, petards, or other projectiles that may cause alarm or peril, shall be punished with the penalty of arrest of from one to five days and a fine of from 15 to 125 pesetas.

ART. 596. The following shall be punished with penalties of from one to fifteen days and a fine of from 70 to 200 pesetas:

1. Those who shall lightly disturb order at the sessions of a superior or inferior court, on the occasion of public acts, spectacles, solemnities, or at largely attended meetings.

2. The subordinates of the civil branch of the administration who shall not observe the proper respect and submission due their superiors, when a higher penalty should not be prescribed in this code or in other laws.

ART. 597. The following shall be punished with a fine of from 15 to 125 pesetas and censure:

1. Those who shall institute or take an active part in "callithumpian concerts" or other tumultuous meetings, thereby offending any person or disturbing public tranquillity.

2. Those who in rounds, or other nocturnal revelries shall, without committing a crime, disturb public order.

3. Those who shall cause disturbance or scandal through their drunkenness.

4. Those who, without being included in other provisions of this code, shall lightly disturb public order by using means that naturally would produce alarm or disturbance.

5. Those who shall lack in the respect and consideration due to the authorities, or shall disobey them lightly, by failing to comply with the special orders that they may give them, provided such want of respect or disobedience should not constitute a crime.

6. Those who shall offend the agents of the authorities in the exercise of their functions in a manner not constituting a crime, and likewise those who shall disobey them on similar occasions.

7. Those who shall not give the authorities such aid as they may call for in cases of crime, fire, shipwreck, inundation, or other calamity, should they have been able to do so without damage or personal risk.

ART. 598. Those who shall conceal their true names, residence, status, or place of domicile, either from the authorities or from any public official who should ask it by virtue of his office, shall be punished with a fine of from 70 to 200 pesetas.

ART. 599. The following shall be punished with a fine of from 15 to 125 pesetas:

1. Those who shall practice a profession that requires a diploma, without possessing one.

2. Those who, in violation of the orders of the authorities, shall appear in public wearing masks at a time when it is not permitted to do so.

3. Those who carry arms without permission to do so.

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TITLE II.—MISDEMEANORS AGAINST PUBLIC INTEREST AND THE GOVERNMENT OF TOWNS.[a]

ART. 600. The following shall be punished with penalties of from one to ten days of arrest or a fine of from 15 to 125 pesetas:

1. Those who shall refuse to receive lawful money in payment.

2. Those who, having received in good faith counterfeit money, shall spend it in a sum less than 325 pesetas and more than 70 after knowing of its falsity.

3. The traders or vendors who shall keep measures or weights artfully contrived to defraud, or who in any manner whatsoever shall violate the rules established for the making of standard weights and measures in the guild to which they belong.

4. Those who shall defraud the public in the sale of goods, whether in quantity or quality, by any means whatsoever not expressly penalized.

5. Traders or vendors in whose possession any food stuffs shall be seized lacking in the proper weight, measure, or quality.

ART. 601. The following shall be punished with penalties of from five to fifteen days of arrest and a fine of from 70 to 200 pesetas:

1. Those who shall spread false rumors or use any other unlawful artifice in order to alter the natural price of things, if the act should not constitute a crime.

2. Those who shall violate the police rules tending to insure the supplying of towns.

ART. 602. Those who in public places or establishments shall start or take part in any kind of games not for pure pastime and recreation shall incur a fine of from 15 to 70 pesetas.

ART. 603[b]. The following shall be punished with a penalty of from five to fifteen days of arrest and a fine of from 70 to 200 pesetas in cases not included in Book II:

1. Pharmacists who shall dispense medicines of bad quality.

2. The owners or persons in charge of eating houses, confectionery stores, bakeries, or other similar establishments who shall sell or serve adulterated or altered drinks or articles of food injurious to health, or who shall not observe in the use and care of vessels, measures, and utensils the established rules or ordinary precautions, when the act does not constitute a crime.

ART. 604. The following shall be punished with a fine of from 15 to 70 pesetas and censure:

1. Those who shall bathe without regard to the rules respecting decency or safety established by the authorities.

2. Those who shall violate the sanitary police regulations regarding prostitution.

3. Those who shall violate the rules issued by the authorities at times of epidemics or contagious diseases.

4. Those who shall violate the regulations, ordinances, and proclamations relating to epidemics among animals, the extinction of locusts, or any other similar plague.

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[a] G. O. No. 80, headquarters Department of Porto Rico, Apr. 12, 1900.

[b] See G. O. 151, headquarters Department of Porto Rico, Sept. 27, 1899, and No. 87, Apr. 25, 1900, pp. 729 and 731.

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5. Those who shall violate the sanitary rules established by the authorities regarding the carrying of corpses and their interment in cases not provided for in Book II.

6. Those who shall desecrate corpses, cemeteries, or places of burial by actions or deeds not constituting a crime.

7. Those who shall throw dead animals, garbage, or refuse in the streets and public places where it is forbidden to do so, or who shall pollute fountains or watering places.

8. Those who shall violate the police rules or proclamations relating to the manufacture of fetid and unhealthy substances or who shall throw them in the streets.

9. Those who in any other manner not constituting a crime shall violate the regulations, ordinances, or proclamations relating to public sanitation issued by the authorities within the scope of their powers.

ART. 605. The following shall be punished with penalties of from one to five days of arrest or a fine of from 15 to 125 pesetas:

1. Those who shall give public exhibitions or hold any kind of meetings whatsoever without obtaining the proper license, or who should overstep the bounds of the permission granted them.

2. Those who shall open establishments of any kind without the license of the authorities, whenever it should be necessary.

ART. 606. The following shall be punished with penalties of from one to ten days of arrest and a fine of from 70 to 200 pesetas:

1. Those who shall extinguish the public lights, or lights on the outside of buildings, or those over their doors or stairways.

2. Those who shall fail to observe the rules established for public lighting at places where this service is to be furnished by individuals.

ART. 607. The following shall be punished with the penalty of a fine of from 15 to 125 pesetas, or censure:

1. Physicians who, noticing in a person whom they are attending, or in a corpse, indications of poisoning or of some other crime, shall not immediately notify the authorities, provided that in view of the circumstances they should not have incurred a greater liability.

2. Those charged with the custody or safe-keeping of a lunatic who shall allow him to wander through the streets and public places without proper surveillance.

3. The owners of fierce and dangerous animals who shall let them loose, or in the way of doing harm.

4. Those who shall violate the regulations, ordinances, or proclamations relating to public conveyances.

5. Those who shall ride or drive saddle animals or carriages through the streets, promenades, and other public places, endangering passers-by, or in violation of the ordinances and proclamations relating to good order.

6. Those who shall obstruct the sidewalks, streets, and public places by their acts or with wares of any kind.

7. Those who shall throw into the street or a public place water, stones, or other objects which might cause damage to persons or things, provided that a greater penalty should not be prescribed for the deed on account of its seriousness or character.

8. Those who keep in places on the outside of their dwellings overhanging the streets or public way, objects that threaten to cause damage to passers-by.

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ART. 608. The following shall be punished with a fine of from 15 to 125 pesetas:

1. The owners of eating houses, inns, and other establishments for the reception of guests who shall fail to give to the authorities the reports and information prescribed by the regulations, ordinances, or proclamations at the time and in the manner prescribed therein.

2. The domestic servants, grooms, and employees who shall fail to comply with the provisions established by the authorities for public assurance and security.

ART. 609. The following shall be punished with a penalty of from 70 to 200 pesetas:

1. Those who shall violate the rules established for avoiding the spread of fire from steam engines, boilers, ovens, stoves, chimneys, or other similar places, or who shall place or construct said objects in violation of the regulations, ordinances, or proclamations, or who shall fail to clean or take care of them, thereby causing damage of fire.

2. Those who in violation of the orders of the authorities shall neglect to repair buildings about to collapse or having a bad appearance.

3. Those who shall violate the rules of safety concerning the deposit of any materials, the digging of wells or excavations.

4. Those who shall violate the regulations, ordinances, or proclamations of the authorities relating to the manufacture and safekeeping of inflammable or corrosive materials or chemical products liable to cause damage.

TITLE III.—MISDEMEANORS AGAINST THE PERSON.

ART. 610. Those who shall cause physical injuries that prevent the injured person from working for from one to seven days, or make medical attendance necessary for a similar period, shall be punished with the penalty of *arresto mayor*.

If the offender should be a son, pupil, or slave of the person injured, the maximum degree of the penalty shall be imposed, whatever be the other attendant circumstances.

ART. 611. The following shall be punished with a penalty of from five to fifteen days of arrest and censure:

1. Those who shall cause physical injuries that do not prevent the person injured from devoting himself to his customary labors, nor require medical attendance.

2. Husbands who shall maltreat their wives, even though they do not cause them injuries of the character mentioned in the foregoing paragraph.

3. Wives that are disobedient to their husbands, who shall maltreat them bodily, or by speech.

4. Spouses who shall cause a scandal by their domestic dissensions after having been warned by the authorities, if the deed should not be included in Book II of this code.

5. Fathers of families who shall forsake their children by not giving them the education corresponding to their condition in life, and such as their means will permit.

6. Guardians, tutors, or persons in charge of a minor under 15 years of age who shall disobey the provisions regarding obligatory primary instruction, or who shall abandon the care of his person.

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7. Sons of a family who should be lacking in the respect and submission due to their parents.

8. Wards who should commit the same fault with regard to their guardians.

9. Those who finding an abandoned child under 7 years of age in danger of its life do not turn it over to the authorities or to its family.

10. Those who in the relinquishment of infants shall break the rules or customs established in their respective locality and those who shall fail to take to a foundling asylum or safe place any infant that they shall find abandoned.

11. Those who shall not succor or help a person whom they may meet in an uninhabited place, wounded or in danger of perishing, if they could do so without their own detriment, unless such omission should constitute a crime.

12. Those with regard to whom, in the case of the brawl defined in article 418 of this code, it shall appear that they had used violence of any kind against the person of the one injured, provided that but slight injuries were inflicted upon the latter, and that the author were unknown.

ART. 612. The following shall be punished with penalties of from one to five days of arrest, or a fine of from 15 to 125 pesetas:

1. Those who shall beat or bodily illtreat another, or abuse him by speech without causing him any physical injury.

2. Those who, without being included in other provisions of this code, shall threaten another with weapons, or draw him into a quarrel, unless in self-defense.

3. Those who shall threaten another by words and in the heat of anger with an injury that would constitute a crime, and who by their subsequent actions show that they persisted in the intention which they gave utterance to in their threat, provided that, in view of the circumstances of the deed, it shall not be included in Book II of this code.

4. Those who by word of mouth threaten to cause another an injury that would not constitute a crime.

5. Those who shall cause another any unjust duress or vexation not punished in Book II of this code.

ART. 613. The following shall be punished with a fine of from 15 to 125 pesetas and censure:

1. The director of a newspaper in which false statements shall have been made, should he refuse to insert gratis within the term of three days the answer addressed to him by the offended person or by his authorized representative, correcting or explaining the same, provided that said rectification, however, does not exceed in length double that of the false item or article.

In case of the absence or death of the person offended, his children, parents, brothers, and heirs shall have the same right.

2. Those who, by means of printing, lithography, or any other means of publication, shall maliciously divulge facts relating to a person's private life, that without constituting outrages should nevertheless cause prejudice or serious trouble in the family to whom the report refers.

3. Those who shall lightly offend another by act or word, if the offended person should complain; his pardon shall extinguish the penalty.

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4. Those who, being called upon by another, in order to avoid a greater evil, should fail to give the assistance requested, provided that no prejudice would have resulted to them.

5. Those who, through mere imprudence or negligence, without committing a violation of the regulations, shall cause an injury which, if done with malice, would constitute a crime or misdemeanor.

TITLE IV.—MISDEMEANORS AGAINST PROPERTY.

ART. 614. Those who for gain or lucre shall interpret dreams, make prognostications or divinations, or take advantage of the public credulity in any other similar manner, shall be punished with the penalty of *arresto menor*, if the act should not be punished in Book II of this code.

ART. 615. The following shall be punished with a penalty of from one to fifteen days of *arresto menor:*

1. Those who shall trespass upon another's estate or fields to gather fruits and eat them on the spot.

2. Those who, in the same manner, shall take fruits, grains, or other products to give them on the spot to horses or cattle.

3. Those who, without the owner's permission, should trespass upon estates or fields before the crops have been completely removed, for the purpose of utilizing the gleanings or any other remnants of the crop.

4. Those who shall trespass upon the inclosed or fenced estate of another, if trespassing thereon were forbidden by a notice.

ART. 616. The following shall be punished with a fine of from 15 to 125 pesetas:

1. Those who shall enter another's inclosed estate to hunt or fish, or fields where trespassing is forbidden, without the owner's permission.

2. Those who under any pretext or for any reason whatsoever shall cross nurseries or sown ground, with whatever intent or pretext.

3. Those who in hunting or fishing on public grounds or of common use shall employ any of the means prohibited by any of the ordinances.

ART. 617. A fine of 10 pesetas shall be imposed for the simple act of trespassing upon another's walled and fenced grounds without the owner's permission.

ART. 618. The following shall be punished with a fine of from 70 to 200 pesetas:

1. Those who, while in charge of carriages, horses, or harmful animals should commit any of the excesses foreseen in the two foregoing articles, unless by reason of the damage caused they should deserve a higher penalty.

2. Those who shall destroy or tear to pieces any hut, shed, hedges, fences, palings, or other protections to property.

3. Those who shall cause damage by throwing upon property stones, articles, or projectiles of any kind from without the same.

ART. 619.[a] The owner of cattle trespassing upon another's estate and causing damage exceeding 15 pesetas shall be punished with a fine for each head of cattle:

1. Of from 2 to 5 pesetas for horned cattle.

2. Of from 1 to 3 pesetas for horses, mules, or asses.

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[a] See G. O. 128, headquarters Department of Porto Rico, Aug. 24, 1899, p. 728.

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3. Of from 50 céntimos to 2 pesetas for goats, if the estate were planted with trees.

4. Of from an amount equal to that of the damage caused to one-third more, for sheep or any other kind of animals not included in the foregoing numbers. The same shall be observed if the animals were goats and there were no trees on the grounds.

ART. 620. The owners of the cattle mentioned in numbers 1, 2, and 3 of the foregoing article, which should pass upon another's estate without the owner's permission, without causing damage, or damage less than 5 pesetas, shall incur a fine of 10 centimos de pesetas for each head of cattle.

If the estate were inclosed, or should contain vineyards, olive groves, sown land, or other plantings, or if there should be a relapsing on the part of the offender, the fine prescribed in the preceding article shall be imposed according to the cases therein prescribed.

ART. 621. If the cattle should be purposely let in, or stray in through the abandonment or negligence of their owners or herdsmen, besides paying the fines mentioned in the preceding articles, the owners and herders in their respective cases shall undergo from 1 to 30 days of arrest, if a greater penalty should not attach to them as guilty of theft or willful or negligent damage.

If they should relapse into this offense for the third time within a space of thirty days, they shall be tried and punished as guilty of theft or damage, according to Book II.

ART. 622. Those who should cause a fire of any character not penalized in Book II of this Code shall be punished with the penalty of *arresto menor*, or a fine of from 15 to 325 pesetas.

ART. 623. The following shall be punished with a fine of from 15 to 70 pesetas:

1. Those who shall violate the regulations or proclamations relating to good order with regard to the burning of stubble or other vegetation.

2. Those who shall violate the ordinances concerning hunting and fishing.

ART. 624. Those who shall cause any damage in any of the manners specified in this Code, whose amount does not exceed 125 pesetas, shall be punished with the penalty of arrest of from 1 to 5 days, or a fine of from 15 to 70 pesetas.

ART. 625. Those who shall cut trees on another's estate, causing damage not exceeding 125 pesetas, shall be punished with a fine of from double to four times the amount of the damage caused; and if said damage should not consist in cutting down trees, but in cutting branches of firewood, the fine shall be from an amount equal to double that of the damage caused.

ART. 626. Those who in making use of waters belonging to others, or in diverting them from their course shall cause damage, the amount of which does not exceed 125 pesetas, shall incur a fine of from double to four times the amount of the damage caused.

ART. 627. Those who intentionally or through negligence or carelessness shall cause any damage whatsoever not punished in this or in the preceding book, shall be punished with a fine of from one-half the amount of damage caused to an equal amount, if it were possible to estimate it, and otherwise with a fine of from 15 to 200 pesetas.[a]

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[a] See G. O. No. 21, headquarters Department of Porto Rico, Feb. 3, 1900.

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TITLE V.—PROVISIONS COMMON TO ALL MISDEMEANORS.

ART. 628. In applying the penalties of this book the courts shall proceed, according to their judgment, within the limits of each of them, in view of the circumstances of each case.

ART. 629. Accomplices in misdemeanors shall be punished with the same penalty as the principals, but in its minimum degree.

ART. 630. The following shall always be confiscated:

1. The arms that the offender may have carried in causing any damage or inflicting any injury, provided he displayed them.
2. The imitated, adulterated, or changed beverages or foodstuffs, provided they be noxious to health.
3. The counterfeit money, or falsified, adulterated, or damaged effects, given out as lawful or good.
4. The foodstuffs with regard to which the public is defrauded either in quantity or quality.
5. The false measures or weights.
6. The outfits employed in unauthorized games of chance or raffles.
7. The articles used in divinations or other similar frauds.

ART. 631. The courts shall order the confiscation of the instruments and articles relating to the misdemeanors mentioned in the foregoing article, according to their discretion, in view of the cases and circumstances.

ART. 632. When insolvent persons are punished with fines, they shall be punished with one day's arrest for every 15 pesetas for which they are liable.

If such liability should not amount to 15 pesetas, they shall, nevertheless, be punished with arrest for one day.

They shall also be punished wih one day of arrest for every 15 pesetas as to the other pecuniary liabilities in favor of a third party.

ART. 633. The provisions of this book neither exclude nor limit the powers that by virtue of the municipal laws or any other special laws belong to the officials of the administration in issuing proclamations relating to police and good order, and in the administrative correction of misdemeanors in cases in which their repression may have been confided to them by the said laws and decrees.[a]

FINAL PROVISION.

ART. 634. All the general penal laws existing prior to the promulgation of this Code are hereby repealed, excepting those relating to crimes not subject to its provisions, in accordance with the prescriptions of article 7 and the royal decree of September 29, 1866, ordering the observance of the project of law for the repression and punishment of the slave trade.

We hereby certify that the foregoing translation of the Penal Code in force in Cuba and Porto Rico, is correct.

(Signed) FRANK L. JOANNINI,
Official Translator,
Division of Customs and Insular Affairs, War Department.
(Signed) M. E. BEALL, *Assistant.*

I hereby certify that Frank L. Joannini is the official translator of the Division of Customs and Insular Affairs of the War Department.

(Signed) CLARENCE R. EDWARDS,
Lt. Col. 47th Infy., U. S. V., Chief of Division.

[a] See G. O. No. 21, headquarters Department of Porto Rico, Feb. 3, 1900.

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APPENDIX.

MODIFICATIONS OF AND ADDITIONS TO THE PENAL CODE MADE BY THE MILITARY GOVERNMENT OF PORTO RICO.

GENERAL ORDERS, No. 109. } HDQRS. DEPARTMENT OF PORTO RICO, *San Juan, July 13, 1889.*

The United States provisional court, instituted by General Orders, No. 88, current series, these headquarters, having been vested with jurisdiction over cases arising in Porto Rico under United States Statutes, the following section of these Statutes will apply to this military department (in addition to the existing local law, articles 150 and 249, Penal Code), and are published for the information and guidance of all concerned: [a]

* * * * * * *

"SEC. 5336. If two or more persons (in any State or Territory) conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to take, seize, or possess any property of the United States contrary to the authority thereof, each of them shall be punished by a fine of not less than five hundred dollars and not more than five thousand dollars, or by imprisonment, with or without hard labor, for a period of not less than six months nor more than six years, or by both such fine and imprisonment."

* * * * * * *

"SEC. 5283. Every person who, within the limits of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out, or arming of any vessel with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, or issues or delivers a commission within the territory or jurisdiction of the United States for any vessel to the intent that she may be so employed, shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars and imprisoned not more than three years; and every such vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores which may have been procured for the building and equipment thereof, shall be forfeited, one-half to the use of the informer and the other half to the use of the United States."

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The following are authoritative opinions relating to the foregoing Statutes:

"It is also a well-established principle of American law that if a publication be calculated to alienate the affection of the people by bringing the Government into disesteem, whether the expedient resorted to be ridicule or obloquy, the writer and publisher are punishable; and whether the defendant really intended by his publication to alienate the affection of the people from the Government or not is immaterial; if the publication be calculated to have that effect it is seditious.

"Depredations by our citizens upon nations at peace with the United States, or combinations for committing them, have at all times been regarded by the American Government and people with the greatest abhorrence.

"Military incursions by our citizens into countries so situated, and the commission of acts of violence on the members thereof, in order to effect a change in its government, or under any pretext whatever, have, from the commencement of our Government, been held equally criminal on the part of those engaged in

[a] See arts. 150 and 245 et seq.

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them, and so much deserving punishment as would be the disturbance of the public peace by the perpetration of similar acts within our own territory.

"No individuals have a right to hazard the peace of the country or to violate its laws upon vague notions of altering or reforming governments in other states."

By command of Brigadier-General Davis:

W. P. HALL, *Adjutant-General.*

GENERAL ORDERS, No. 128. } HDQRS. DEPARTMENT OF PORTO RICO, *San Juan, August 24, 1899.*

In order to avoid as far as possible the annoyance and damage caused by stray animals, it is hereby ordered—

1st. Alcaldes are authorized to impose fines for the benefit of the municipal treasuries upon the owners of stray animals found trespassing upon private property.

2nd. In the investigation of complaints of this character, alcaldes shall institute oral examinations of the interested parties and their witnesses. For the purpose of taking such evidence the alcalde is authorized to administer oaths. Against his decision there shall be no appeal.

3rd. Fines imposed by alcaldes pursuant to the foregoing paragraphs shall be as follows:

For the first offense, one ($1) dollar per head.

For the second offense within six months, two ($2) dollars per head.

For each subsequent offense within six months, three ($3) dollars per head.

4th. Persons upon whom fines have been imposed pursuant to the foregoing paragraph who fail to pay the same within three days shall be arrested and confined in municipal jail one day for each dollar which they may fail to pay. Owners of property who suffer damages from stray animals may institute civil action before the proper court for such damages.

5th. A copy of this order in Spanish and in English shall be posted publicly on the door of every alcalde's office, for the information and guidance of all concerned.

6th. All laws or orders in conflict with the foregoing provisions are hereby revoked.

By command of Brigadier-General Davis:

W. P. HALL, *Adjutant-General.*

(See articles 619-621.)

GENERAL ORDERS, No. 129. } HDQRS. DEPARTMENT OF PORTO RICO, *San Juan, August 24, 1899.*

1. It having come to the notice of the department commander that the provisions of the penal code of Porto Rico for the prevention of the crime of duelling[6] have for some years past been disregarded by the authorities charged with their enforcement, and that persons have been permitted to engage in this pernicious practice without official interference or punishment, it is hereby announced that according to the spirit of American law and institutions it is a serious offense to challenge another to fight a duel, either by word or letter, or to be the bearer of such challenge, or to endeavor to provoke another to send a challenge, or to aid or abet in provoking or inciting a duel. To act as principal in a duel, or to participate in a duel as a second, attending surgeon, or assistant to either of the principals in a duel, whether either principal is injured or not, is a high misdemeanor.

2. Where one of the parties to a duel is killed, the survivor is guilty of murder, and all who are present aiding and abetting in the act are accomplices.

3. In order that there may be no misunderstanding regarding this matter in future, it is hereby ordered that all persons who participate in duels as challengers, bearers of challenges, or as provoking or endeavoring to provoke challenges to fight duels, shall be guilty of a misdemeanor and shall upon conviction thereof be punished by imprisonment at hard labor in jail for not less than three nor more than six months.

4. All persons who participate as principals, seconds, surgeons, or assistants in duels where there are no resulting wounds or injuries shall upon conviction thereof be punished by confinement at hard labor for not less than six months nor more than one year.

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[6] See Arts. 438 et seq.

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5. All persons who participate in duels either as principals, seconds, surgeons, or assistants, where one of the parties is wounded, shall be deemed guilty of assault with intent to kill and upon conviction thereof will be punished by confinement in the penitentiary at hard labor for not less than one year.

6. All persons participating in duels either as principals, seconds, surgeons, or assistants, where one of the parties is killed or dies as the result of a wound received in said duel, shall be deemed guilty (as principals or accomplices) of murder, and upon conviction thereof shall be punished accordingly.

7. The district courts instituted by General Orders, No. 114, current series, these headquarters, and the United States provisional court instituted by General Orders, No. 88, current series, these headquarters, shall have concurrent jurisdiction over the offenses herein described. It is hereby made the duty of all judges and officers connected with the said courts, and of all municipal judges, alcaldes, and members of the insular and municipal police forces of this island to give immediate information to the nearest court having jurisdiction of any violation of this order.

8. All laws, decrees, or orders now or heretofore existing in conflict with the provisions of the foregoing order are hereby revoked and annulled.

By command of Brigadier-General Davis:

W. P. HALL, *Adjutant-General.*

GENERAL ORDERS, No. 151. } HDQRS. DEPARTMENT OF PORTO RICO, *San Juan, September 27, 1899.*

The following orders are published for the information and guidance of all concerned: [a]

PURITY AND WHOLESOMENESS OF FOODS, DRINKS, DRUGS, AND MEDICINES.

1. Foods and drinks in the meaning of this order are all articles used for food or drink by man, whether simple or compound. The term drug includes all medicines used by man, whether for internal or external use.

2. No adulterated articles of food or drink shall be made or sold in Porto Rico. Articles ordinarily recognized as foods, which are really mixtures, may be sold if marked with the word "mixture" or "compound." No diseased, decomposed, offensive, or unclean article shall be used in the manufacture of any food, drink, or medicine.

3. No person shall sell in Porto Rico any impure, diseased, decayed, or unwholesome provisions, or any adulterated bread, or any food substance mixed with a poisonous substance.

4. No person, whether owner, manager, keeper of, agent, bartender, or clerk in any saloon, restaurant, boarding or eating house in Porto Rico, shall offer for sale any food or drink containing anything poisonous or unwholesome.

5. No person owning, renting, or leasing any stall, room, or stand where milk, meats, vegetables, or groceries are sold as food shall fail to keep said room, stall, or stand in a cleanly condition, nor shall such persons allow such milk, meats, vegetables, or groceries to become poisonous or infected or unfit for food by reason of uncleanly condition of such stall, room, or stand.

6. No person shall offer for sale in Porto Rico any unwholesome, watered, or adulterated milk, or milk produced from cows which are visibly diseased or are kept upon and fed on garbage, swill, or other deleterious substances.

7. No person in Porto Rico shall sell any article of food or drug which is not of the nature, substance, and quality of the article demanded by any purchaser; and no person shall sell any compound food or drug which is not composed of ingredients in accordance with the demand of the purchaser.

8. No person in Porto Rico shall substract from any article of food any part of it, so as to affect injuriously its quality, substance, or nature; and no person shall sell any article so altered without making disclosure of the alteration.

9. All drugs sold must be of the standard quality and strength prescribed in the Spanish or United States pharmacopœias.

10. All compound, proprietary, patent, or secret remedies sold in Porto Rico shall bear upon the bottle, box, or package an exact formula, stating the constituents of the medicine or remedy.

11. No pharmacist not a legally qualified physician shall prescribe remedies for the sick. Every bottle, box, or package containing any medicine or drug

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[a] See arts. 347–350, 353, and 603. Further modified by G. O. 87, Apr. 25, 1900.

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shall be labeled with the name of the same and with the name of the physician who wrote the prescription. Pharmacists shall not sell arsenic, strychnine, or their compounds, or other drugs commonly known as deadly poisons, except upon the prescriptions of legally qualified physicians. Before such sale is made the name of drug and its quantity, the name of the physician prescribing, and also the name of the purchaser shall be entered in a book especially kept for the purpose. The purchaser shall sign his name in a book below the entry made by the druggist. Every bottle, box, or package containing a dangerous drug shall be distinctly labeled "*Poison*," and the person shall be warned of the nature of the article.

12. Violation of the provision of this regulation shall, upon conviction, be punished with a fine of not less than $10 nor more than $200, or imprisonment for not less than five nor more than ninety days, at the discretion of the court.

By command of Brigadier-General Davis:

W. P. HALL, *Adjutant-General.*

GENERAL ORDERS, No. 152. } HDQRS. DEPARTMENT OF PORTO RICO, *San Juan, September 29, 1899.*

Upon the recommendation of the judicial board, the following is published for the information and guidance of all concerned: [a]

I. In all cases wherein under the penal code now in force tribunals of justice may impose confinement as a punishment for crime the several courts having jurisdiction to impose such punishment are hereby authorized to add the imposition of hard labor to such punishment during the term of imprisonment wherever, in their judgment, the imposition of such labor may be advisable.

II. The court shall include in its sentence the designation of the jail wherein the prisoners sentenced for terms of less than six months shall serve their imprisonment; but the place of confinement of such prisoners may be changed by the board of prison control whenever the jail is crowded, or for other good cause.

III. All persons hereafter sentenced by the U. S. provisional or insular courts to imprisonment for a longer term than six months as a punishment for crime shall be imprisoned within the penitentiary at San Juan, and shall be subject during such confinement to all the rules and regulations of said penitentiary.

IV. All laws, orders, or decrees, or parts thereof, inconsistent with the provisions of this order are hereby repealed.

By command of Brigadier-General Davis:

C. H. HEYL,
Major, Inspector-General, U. S. A., Acting Adjutant-General.

GENERAL ORDERS, No. 54. } HDQRS. DEPARTMENT OF PORTO RICO, *San Juan, March 12, 1900.*

I. The following act of Congress, approved February 7th, 1896, is made locally applicable to this department, and is published for the information and guidance of all concerned:

"Any person who, in any of the Territories or the District of Columbia, shall voluntarily engage in a pugilistic encounter between man and man or a fight between a man and a bull or any other animal, for money or for other thing of value, or for any championship, or upon the result of which any money or any thing of value is bet or wagered, or to see which any admission fee is charged, either directly or indirectly, shall be deemed guilty of a felony, and upon conviction shall be punished by imprisonment in the penitentiary not less than one nor more than five years.

"By the term 'pugilistic encounter,' as used in this bill, is meant any voluntary fight by blows by means of fists or otherwise, whether with or without gloves, between two or more men, for money or for a prize of any character, or for any other thing of value, or for any championship, or upon the result of which any money or any thing of value is bet or wagered, or to see which any admission fee is charged, either directly or indirectly."

II. The district courts instituted by General Orders, No. 118, series 1899, these headquarters, shall have jurisdiction of all violations of this law, subject to the limitations of General Orders, No. 88, series of 1899, these headquarters.

By command of Brigadier-General Davis:

W. P. HALL, *Adjutant-General.*

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[a] See Arts. 105 et seq.

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GENERAL ORDERS, No. 87. } HDQRS. DEPARTMENT OF PORTO RICO, *San Juan, April 25, 1900.*

Upon the recommendation of the superior board of health, paragraphs 10, 11, and 12, of General Orders, No. 151, series of 1899, Headquarters Department of Porto Rico, are hereby revoked, and the following substituted therefor:

10. Paragraph 8, of article 11, of the Spanish tariff law, in force immediately prior to the American occupation of Porto Rico, prohibited the importation of "pharmaceutical preparations or secret remedies of unknown composition, or the formulas of which have not been published." (Aranceles de Aduanas, Disposición Undecima, art. 8.) With a view to carrying out the provisions of this former law, it is hereby ordered that on and after July 1, 1900, all proprietary, patent, or secret remedies sold in Porto Rico, shall bear upon the bottle, box, or package a number which shall correspond with the number on a duly attested formula, stating the constituents of the medicine or remedy, which formula must be deposited in the archives of the superior board of health of Porto Rico. A fee of twenty-five ($25.00) dollars will be paid to the superior board of health of Porto Rico, for the registration of each formula deposited under the provisions of this paragraph, which money, after deducting the necessary expenses of registration, will be turned into the treasury and applied toward the support of the laboratory of the superior board of health.

11. No pharmacist, not a legally qualified physician, shall prescribe for the sick. Every bottle, box, or package containing any medicine or drug, must, when dispensed, be labelled with the name of the same, or if dispensed on prescription, with the number of the prescription and the name of the physician who wrote it, as well as that of the pharmacist who compounded it. Pharmacists will file all prescriptions dispensed by them, and must not sell arsenic, strychnine, or their compounds, or other drugs commonly known as deadly poisons, except upon the prescriptions of legally qualified physicians. Before such sale is made, the name of the drug and its quality, the name of the physician prescribing it, and also the name of the purchaser, shall be entered in a book specially kept for the purpose. The purchaser shall sign his name in the book below the entry made by the druggist. Every bottle, box, or package containing a dangerous drug, shall be distinctly labelled "POISON," and the purchaser shall also be warned of the nature of the article.

12. Violations of any of the provisions of this order, or of any remaining provisions of General Orders, No. 151, series of 1899, these Headquarters, shall, upon conviction, be punished by a fine of not less than ten (10.00) dollars, nor more than two hundred (200.00) dollars, or by imprisonment for not less than five nor more than ninety days, or by both such fine and imprisonment at the discretion of the court. The district courts instituted by General Orders, No. 114, series of 1899, these headquarters, shall have jurisdiction in cases arising under this order, subject to the provisions of General Orders, No. 88, series of 1899, these headquarters.

By command of Brigadier-General Davis:

WM. E. ALMY,
Acting Adjutant-General.

PENALTIES.

The translation of legal words and phrases from Spanish into English presents certain difficulties because Spanish and English procedure are so different. While both have some features in common, there are to be found courts, officials, and methods peculiar to each for which no exact equivalent can be found in the other language. The translator must be constantly on his guard against making an interpretation of law, and should never hesitate in a legal translation to sacrifice, what may be called good English, for fidelity to the original text. It therefore becomes necessary at times to leave the original expression untranslated rather than make a paraphrase of an expression for which there is no exact equivalent.

This feature of legal translation may be illustrated by calling attention to the manner in which Spanish law deals with the subject of penalties. They are divided into corporal (*aflictivas*), correctional (*correccionales*), and light (*leves*). There are penalties common to these three classes and also accessory penalties (*penas accessorias*), fractional penalties (*penas fraccionales*), and

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composite (*compuestas*), and from these different classes there have been developed in the penal code sixty degrees of penalties.

The penalties *aflictivas* or *correccionales* employed in the penal code, which are included in the general scale of article 24, are comprised in one or more of the six graduated scales of article 90, formed for the purpose of regulating the increase or reduction of certain penalties for crimes committed, frustrated, or attempted, for complicity therein, concealment, and for the purpose of taking into account aggravating or extenuating circumstances.

A simple penalty according to the general scale would be, for example, *arresto mayor*, *prisión correccional*, or banishment. A double penalty is created by the imposition of two or more simple penalties—as, for example, *arresto mayor* and a fine. An alternative penalty leaves the imposition of one, two, or more simple penalties to the discretion of the court—as, for example, *arresto mayor*, banishment, or a fine. Fractional penalties are those which permit the imposition of one or two stated degrees of a given penalty and even of a certain portion or combination of penalties—as, for example, *arresto mayor* in its maximum degree, or *prisión correccional* in its minimum and medium degrees. At other times penalties *compuestas* are imposed, these being two or more penalties either to their fullest extent or divided—as, for example, *cadena temporal* to *cadena perpetual* or *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree.

Such varied and multiplied combinations of penalties have given rise to what may be called nine scales and sixty degrees of penalties, as is shown in the following table, while the second table shows the duration of the penalties in all their forms and combinations.

Groups and Scales of Penalties.

In the first group are included the six scales of penalties given in article 90, which are fundamental and necessarily serve as a basis and guide for the rest.

In the second group are included the penalties composed of two or more divisible or indivisible penalties, but indicated in their full extent.

In the third group are included those composed of one or two indivisible penalties and of the maximum degree or of the medium and maximum of a divisible penalty.

In the fourth group are included the penalties formed with three or more degrees of two penalties, subdividing them by the same rule into three, four, or five degrees.

In the fifth group are included the subdivided penalties of three or more degrees.

In the sixth group are included the penalties formed of two degrees of one or two penalties.

In the seventh are included the subdivided penalties of two degrees.

In the eighth group are those with but one degree.

In the ninth group are included the subdivided penalties of one degree.

FIRST GROUP.

[Graduated scales of article 92 of the Code, and which are therefore considered fundamental.]

Scale No. 1.—Death, *cadena perpetua*, *cadena temporal*, *presidio mayor*, *presidio correccional*, *arresto*.

Scale No. 2.—Death, *reclusión perpetua*, *reclusión temporal*, *prisión mayor*, *prisión correccional*, *arresto*.

Scale No. 3.—*Relegación perpetua*, *relegación temporal*, *confinamiento*, banishment, public censure, caution.

Scale No. 4.—Perpetual expulsion, temporal expulsion, *confinamiento*, banishment, public censure, caution.

Scale No. 5.—Perpetual absolute disqualification, temporary absolute disqualification, suspension from public office, the right of suffrage (active and passive), profession, or trade.

Scale No. 6.—Perpetual special disqualification for public office, the right of suffrage (active or passive), profession, or trade; temporary special disqualification for public office, the right of suffrage (active and passive), profession, or trade; suspension from public office, the right of suffrage (active and passive), profession, and trade.

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SECOND GROUP.

[Penalties composed of two or more divisible or indivisible penalties to their fullest extent, which in their reduction are governed by the second rule of article 76.]

Scale No. 7.—Cadena perpetua to death, *cadena temporal, presidio mayor, presidio correccional.*

Scale No. 8.—Reclusión perpetua to death, *reclusión temporal, prisión mayor, prisión correccional, arresto.*

Scale No. 9.—Cadena temporal to *cadena perpetua, presidio mayor, presidio correccional, arresto.*

Scale No. 10.—Temporary absolute disqualification to perpetual absolute disqualification; temporary special disqualification, suspension from public office, the right of suffrage, active and passive, profession or trade.

Scale No. 11.—Reclusión temporal to *reclusión perpetua, prisión mayor, prisión correccional, arresto.*

Scale No. 12.—Reclusión temporal to death, *prisión mayor, prisión correccional, arresto.*

THIRD GROUP.

[Penalties composed of one or two indivisible penalties and of the maximum degree (or of the medium and maximum) of a divisible penalty, which in their decrease are governed by the third rule of article 74.]

Scale No. 13.—Cadena temporal in its maximum degree to *cadena perpetua; presidio mayor* in its maximum degree to *cadena temporal* in its medium degree; *presidio correccional* in its maximum degree to *presidio mayor* in its medium degree; *arresto mayor* in its maximum degree to *presdio correccional* in its medium degree.

Scale No. 14.—Cadena temporal in its maximum degree to death; *presidio mayor* in its maximum degree to *cadena temporal* in its medium degree.

(The decrease follows as in the above; it is the third case of the demonstrative table of article 75.)

Scale No. 15.—Temporary absolute disqualification in its maximum degree to perpetual absolute disqualification; suspension from ——— in its maximum degree to temporary absolute disqualification in its medium degree; fine to suspension in its medium degree.

Scale No. 16.—Reclusión temporal in its maximum degree to death; *prisión mayor* in its maximum degree to *reclusión temporal* in its medium degree; *prisión correccional* in its maximum degree to *prisión mayor* in its medium degree; *arresto mayor* in its maximum degree to *prisión correccional* in its medium degree; fine or *arresto mayor* in its medium degree.

Scale No. 17.—Relegación temporal in its maximum degree to *relegación perpetua; confinamiento* in its maximum degree to *relegación temporal* in its medium degree; banishment in its maximum degree to *confinamiento* in its medium degree; public censure to banishment in its medium degree.

Scale No. 18.—Cadena temporal in its medium degree to *cadena perpetua; presidio mayor* in its medium degree to *cadena temporal* in its minimum degree; *presidio correccional* in its medum degree to *presidio mayor* in its minimum degree; *arresto mayor* in its medium degree to *presidio correccional* in the minimum degree; fine to *arresto mayor* in its minimum degree.

FOURTH GROUP.

[Penalties composed of three or more degrees of two penalties, which in their decrease are governed by rule fourth of article 74.]

Scale No. 19.—Arresto mayor in its maximum degree to *prisión correccional* in its medium degree; fine to *arresto mayor* in its medium degree.

Scale No. 20.—Presidio correccional in its maximum degree to *presidio mayor* in its medium degree; *arresto mayor* in its maximum degree to *presidio correccional* in its medium degree; fine to *arresto mayor* in its medium degree.

Scale No. 21.—Presidio mayor in its medium degree to *cadena temporal* in its minimum degree; *presidio correccional* in its medium degree to *presidio mayor* in its minimum degree; *arresto mayor* in its medium degree to *presidio correccional* in its minimum degree; fine to *arresto mayor* in its minimum degree.

Scale No. 22.—Prisión mayor in its medium degree to *reclusión temporal* in its minimum degree; *prisión correccional* in its medium degree to *prisión mayor* in its minimum degree; *arresto mayor* in its medium degree to *prisión correccional* in its minimum degree; fine to *arresto mayor* in its minimum degree.

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Scale No. 23.—Suspension from ——— in its maximum degree to temporary absolute disqualification in its medium degree; fine to suspension from ——— in its medium degree.

Scale No. 24 (of four degrees).—*Arresto mayor to prisión correccional* in its minimum degree; fine.

Scale No. 25.—*Confinamiento* in its maximum degree to *relegación temporal;* banishment in its maximum degree to *confinamiento* in its medium degree; public censure to banishment in its medium degree; caution; fine.

Scale No. 26.—Temporary special disqualification in its maximum degree to perpetual special disqualification; suspension from ——— in its maximum degree to temporary special disqualification in its medium degree; fine to suspension in its medium degree.

Scale No. 27.—Suspension in its medium and maximum degrees to temporary absolute disqualification in its medium degree; fine to suspension in its minimum degree.

Scale No. 28 (of five degrees).—*Presidio correccional* to *presidio mayor* in its medium degree; *arresto mayor;* fine.

Scale No. 29.—*Prisión mayor* in its medium degree to *reclusión temporal; prisión correccional* in its medium degree to *prisión mayor* in its minimum degree; *arresto mayor* in its medium degree to *prisión correccional* in its minimum degree; fine to *arresto mayor* in its minimum degree.

FIFTH GROUP.

[Subdivided penalties composed of three or more degrees included in the fourth group, which decrease according to rule 5.]

Scale No. 30.—The minimum degree of *presidio correccional* in its medium degree to *presidio mayor* in the same degree; the minimum degree of *arresto mayor* in its medium degree to *presidio correccional* in its minimum degree; fine (or the minimum degree of fine to *arresto mayor* in its minimum degree).

Scale No. 31.—The maximum degree of *presidio correccional* in its medium degree to *presidio mayor* in its minimum degree; the maximum degree of *arresto mayor* in its medium degree to *presidio correccional* in its minimum; *arresto mayor* in its minimum degree (or the maximum degree of fine to *arresto mayor* in its minimum degree).

Scale No. 32 (of three degrees).—The maximum degree of *presidio correccional* in its maximum degree to *presidio mayor* in its medium degree; the maximum degree of *arresto mayor* in its maximum degree to *presidio correccional* in its medium degree; *arresto mayor* in its medium degree (or the maximum degree of fine to *arresto mayor* in its medium degree).

Scale No. 33 (of three degrees).—The maximum degree of *presidio mayor* in its medium degree to *cadena temporal* in its minimum degree; the maximum degree of *presidio correccional* in its medium degree to *presidio mayor* in its minimum; the maximum degree of *arresto mayor* in its medium degree to *presidio correccional* in the minimum; *arresto mayor* in its minimum degree (or the maximum degree of fine to *arresto mayor* in its minimum degree).

Scale No. 34 (of five degrees).—The maximum degree of *presidio correccional* to *presidio mayor* in its medium degree; the maximum degree of *arresto mayor;* fine.

SIXTH GROUP.

[Divided penalties which are formed with two degrees of one penalty or of two distinct penalties.]

Scale No. 35.—*Confinamiento* in its minimum and medium degrees; banishment in its medium and maximum degrees; public censure to banishment in its minimum degree; caution.

Scale No. 36.—Banishment in its minimum and medium degrees; public censure; caution.

Scale No. 37.—Temporary absolute disqualification in its minimum and medium degrees; suspension in its medium and maximum degrees; fine to suspension in its minimum degree.

Scale No. 38.—*Presidio correccional* in its maximum degree to *presidio mayor* in its minimum degree; *presidio correccional* in its minimum and medium degrees; *arresto mayor* in its medium and maximum degrees; fine (or *arresto mayor* in its minimum degree).

Scale No. 39.—*Presidio mayor* in its minimum and medium degrees; *presidio correccional* in its medium and maximum degrees; *arresto mayor* in its maximum degree to *presidio correccional* in the minimum degree; *arresto mayor* in its minimum and medium degrees; fine.

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Scale No. 40.—Prisión mayor in its medium and maximum degrees; *prisión correccional* in its maximum degree to *prisón mayor* in its minimum degree; *prisón correccional* in its minimum and medium degrees; *arresto mayor* in its medium and maximum degrees; fine to *arresto mayor* in its minimum degree.

Scale No. 41.—Reclusión temporal in its medium and maximum degrees; *prisión mayor* in its maximum degree to *reclusión temporal* in its minimum degree; *prisión mayor* in its minimum and medium degrees; *prisión correccional* in its medium and maximum degrees; *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree; *arresto mayor* in its minimum and medium degrees; fine.

Scale No. 42.—Suspension in its maximum degree to temporary absolute disqualification in its minimum degree; suspension in its minimum and medium degrees; fine.

SEVENTH GROUP.

[Subdivided penalties formed with two degrees of one penalty or of two distinct penalties.]

Scale No. 43.—The minimum degree of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree; the minimum degree of *arresto mayor* in its minimum and medium degrees; fine.

Scale No. 44.—The maximum degree of *presidio correccional* in its maximum degree to *presidio mayor* in its minimum; the maximum degree of *presidio correccional* in its minimum and medium degrees; the maximum degree of *arresto mayor* in its medium and maximum degrees; *arresto mayor* in its minimum degree (or maximum degree of fine to *arresto mayor* in its minimum degree).

Scale No. 45.—Maximum degree of *prisión correccional* in its minimum to medium degrees; maximum degree of *arresto mayor* in its medium and maximum degrees; maximum degree of fine to *arresto mayor* in its minimum degree.

Scale No. 46.—Maximum degree of *prisión correccional* in its medium to maximum degree; maximum degree of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum; maximum degree of *arresto mayor* in its minimum and medium degrees; fine.

EIGHTH GROUP.

[Divided penalties which include but one degree of divisible penalties.]

Scale No. 47.—Arresto mayor in its minimum degree; fine.

Scale No. 48.—Arresto mayor in its medium degree; fine.

Scale No. 49.—Arresto mayor in its maximum degree; fine.

Scale No. 50.—Cadena temporal in its maximum degree; *presidio mayor* in its maximum degree; *presidio correccional* in its maximum degree; *arresto mayor* in its maximum degree.

Scale No. 51.—Confinamiento in its minimum degree; banishment in its minimum degree; public censure; caution.

Scale No. 52.—Temporary absolute disqualification for public office in its minimum degree; suspension from ——— in its minimum degree.

Scale No. 53.—Temporary special disqualification in its minimum degree; suspension from ——— in its minimum degree.

Scale No. 54.—Relegación temporal in its maximum degree; *confinamiento* in its maximum degree; banishment in its maximum degree; public censure; caution.

Scale No. 55.—Presidio correccional in its medium degree; *arresto mayor* in its medium degree; fine.

Scale No. 56.—Presidio mayor in its minimum degree; *presido correccional* in its minimum degree; *arresto mayor* in its minimum degree.

Scale No. 57.—Presidio mayor in its medium degree; *presidio correccional* in its medium degree; *arresto mayor* in its medium degree; fine.

Scale No. 58.—Cadena temporal in its minimum degree; *presidio mayor* in its minimum degree; *presidio correccional* in its minimum degree; *arresto mayor* in its minimum degree.

NINTH GROUP.

[Subdivided penalties of the eighth group.]

Scale No. 59.—Maximum degree of *confinamiento* in its maximum degree; maximum degree of that of banishment in its maximum degree; public censure; caution.

Scale No. 60.—Maximum degree of *relegación temporal* in its maximum degree; maximum degree of *confinamiento* in its maximum degree; maximum degree of banishment in its maximum degree; public censure; caution.

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General table of the duration of penalties in all the forms and combinations prescribed in the code and their division into degrees.

Penalties.	Time included in the entire penalty.	Time included in its minimum degree.	Time included in its medium degree.	Time included in its maximum degree.
1. *Arresto mayor*	From 1 month and 1 day to 6 months.	From 1 to 2 months	From 2 months and 1 day to 4 months.	From 4 months and 1 day to 6 months.
2. *Arresto mayor* in its minimum degree.	From 1 month and 1 day to 2 months.	From 1 month and 1 day to 1 month and 10 days.	From 1 month and 11 days to 1 month and 20 days.	From 1 month and 21 days to 2 months.
3. *Arresto mayor* in its medium degree.	From 2 months and 1 day to 4 months.	From 2 months and 1 day to 2 months and 20 days.	From 2 months and 21 days to 3 months and 10 days.	From 3 months and 11 days to 4 months.
4. *Arresto mayor* in its maximum degree.	From 4 months and 1 day to 6 months.	From 4 months and 1 day to 4 months and 20 days.	From 4 months and 21 days to 5 months and 10 days.	From 5 months and 11 days to 6 months.
5. *Arresto mayor* in its minimum and medium degrees.	From 1 month and 1 day to 4 months.	From 1 month and 1 day to 2 months.	From 2 months and 1 day to 3 months.	From 3 months and 1 day to 4 months.
6. *Arresto mayor* in its medium and maximum degrees.	From 2 months and 1 day to 6 months.	From 2 months and 1 day to 3 months and 10 days.	From 3 months and 11 days to 4 months and 20 days.	From 4 months and 21 days to 6 months.
7. Maximum degree of *arresto mayor* in its minimum and medium degrees.	From 3 months and 1 day to 4 months.	From 3 months and 1 day to 3 months and 10 days.	From 3 months and 11 days to 3 months and 20 days.	From 3 months and 21 days to 4 months.
8. *Arresto mayor* to *prisión correccional* in its minimum degree.	From 1 month and 1 day to 2 years and 4 months.	From 1 month and 1 day to 10 months.	From 10 months and 1 day to 1 year and 7 months.	From 1 year 7 months and 1 day to 2 years and 4 months.
9. *Arresto mayor* to *prisión correccional* in its maximum degree.	From 1 month and 1 day to 6 years.	From 1 month and 1 day to 2 years and 20 days.	From 2 years and 21 days to 4 years and 10 days.	From 4 years and 11 days to 6 years.
10. *Arresto mayor* in its medium degree to *prisión* (or *presidio*) *correccional* in its minimum degree.	From 2 months and 1 day to 2 years and 4 months.	*Arresto mayor* in its medium degree.	*Arresto mayor* in its maximum degree.	*Prisión correccional* in its minimum degree.
11. *Arresto mayor* in its maximum degree to *prisión* (or *presidio*) *correccional* in its minimum degree.	From 4 months and 1 day to 2 years and 4 months.	From 4 months and 1 day to 1 year.	From 1 year and 1 day to 1 year and 8 months.	From 1 year 8 months and 1 day to 2 years and 4 months.
12. *Arresto mayor* in its maximum degree to *prisión* (or *presidio*) *correccional* in its medium degree.	From 4 months and 1 day to 4 years and 2 months.	*Arresto mayor* in its maximum degree.	*Prisión correccional* in its minimum degree.	*Prisión correccional* in its medium degree.

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13. Maximum degree of *arresto mayor* in its medium degree to *presidio correccional* in its minimum.	*Presidio correccional* in its minimum degree. (From 6 months and 1 day to 2 years and 4 months.)	From 6 months and 1 day to 1 year 1 month and 10 days.	From 1 year 1 month and 11 days to 1 year 8 months and 20 days.	From 1 year 8 months and 21 days to 2 years and 4 months.
14. Minimum degree of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum degree.	From 4 months and 1 day to 1 year.	From 4 months and 1 day to 6 months and 20 days.	From 6 months and 21 days to 9 months and 10 days.	From 9 months and 11 days to 1 year.
15. Maximum degree of *arresto mayor* in its maximum degree to *prisión correccional* in its minimum.	From 1 year 8 months and 1 day to 2 years and 4 months.	From 1 year 8 months and 1 day to 1 year 10 months and 20 days.	From 1 year 10 months and 21 days to 2 years 1 month and 10 days.	From 2 years 1 month and 11 days to 2 years and 4 months.
16. *Cadena temporal*	From 12 years and 1 day to 20 years.	From 12 years and 1 day to 14 years and 8 months.	From 14 years 8 months and 1 day to 17 years and 4 months.	From 17 years 4 months and 1 day to 20 years.
17. *Cadena temporal* to *cadena perpetua*.	From 12 years and 1 day to *cadena perpetua*.	From 12 years and 1 day to 16 years.	From 16 years and 1 day to 20 years.	*Cadena perpetua*.
18. *Cadena temporal* in its medium degree to *cadena perpetua*.	From 14 years 8 months and 1 day to *cadena perpetua*.	The medium degree of *cadena temporal*.	Maximum degree of *cadena temporal*.	Do.
19. Maximum degree of *cadena temporal*.	From 17 years 4 months and 1 day to 20 years.	From 17 years 4 months and 1 day to 18 years 2 months and 20 days.	From 18 years 2 months and 21 day to 19 years 1 month and 10 days.	From 16 years 1 month and 10 days to 20 years.
20. *Cadena temporal* in its maximum degree to *cadena perpetua*.	From 17 years 4 months and 1 day to *cadena perpetua*.	From 17 years 4 months and 1 day to 18 years and 8 months.	From 18 years 8 months and 1 day to 20 years.	*Cadena perpetua*.
21. *Cadena temporal* in its maximum degree to death.	From 17 years 4 months and 1 day to death.	*Cadena temporal* in its maximum degree.	*Cadena perpetua*	Death.
22. *Cadena perpetua* to death	*Cadena perpetua* to death.....	*Cadena perpetua* (according to the rules of article 79).	*Cadena perpetua* (according to the rules of article 79).	Do.
23. *Confinamiento*	From 6 years and 1 day to 12 years.	From 6 years and 1 day to 8 years..	From 8 years and 1 day to 10 years.	From 10 years and 1 day to 12 years.
24. *Confinamiento* in its minimum degree.	From 6 years and 1 day to 8 years..	From 6 years and 1 day to 6 years and 8 months.	From 6 years 8 months and 1 day to 7 years and 4 months.	From 7 years 4 months and 1 day to 8 years.
25. *Confinamiento* in its minimum and medium degrees.	From 6 years and 1 day to 10 years.	From 6 years and 1 day to 7 years and 4 months.	From 7 years 4 months and 1 day to 8 years and 8 months.	From 8 years 8 months and 1 day to 10 years.
26. *Confinamiento* in its maximum degree.	From 10 years and 1 day to 12 years.	From 10 years and 1 day to 10 years and 8 months.	From 10 years 8 months and 1 day to 11 years and 4 months.	From 11 years 4 months and 1 day to 12 years.

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General table of the duration of penalties in all the forms and combinations prescribed in the code and their division into degrees—Continued.

Penalties.	Time included in the entire penalty.	Time included in its minimum degree.	Time included in its medium degree.	Time included in its maximum degree.
27. Maximum degree of *confinamiento* in its maximum degree.	From 11 years 4 months and 1 day to 12 years.	From 11 years 4 months and 1 day to 11 years 6 months and 20 days.	From 11 years 6 months and 21 days to 11 years 9 months and 10 days.	From 11 years 9 months and 11 days to 12 years.
28. *Confinamiento* in its maximum degree to *relegación temporal.*	From 10 years and 1 day to 20 years.	From 10 years and 1 day to 13 years and 4 months.	From 13 years 4 months and 1 day to 16 years and 8 months.	From 16 years 8 months and 1 day to 20 years.
29. Disqualification in its minimum degree.	From 6 years and 1 day to 8 years..	From 6 years and 1 day to 6 years and 8 months.	From 6 years 8 months and 1 day to 7 years and 4 months.	From 7 years 4 months and 1 day to 8 years.
30. Disqualification in its minimum and medium degrees.	From 6 years and 1 day to 10 years.	From 6 years and 1 day to 7 years and 4 months.	From 7 years 4 months and 1 day to 8 years and 8 months.	From 8 years 8 months and 1 day to 10 years.
31. Disqualification in its maximum degree to perpetual disqualification.	From 10 years and 1 day to perpetual disqualification.	From 10 years and 1 day to 11 years.	From 11 years and 1 day to 12 years.	Perpetual disqualification.
32. Temporary absolute disqualification to perpetual.	From 6 years and 1 day to perpetual disqualification.	From 6 years and 1 day to 9 years..	From 9 years and 1 day to 12 years.	Do.
33. *Presidio, prisión correccional* and banishment.	From 6 months and 1 day to 6 years.	From 6 months and 1 day to 2 years and 4 months.	From 2 years 4 months and 1 day to 4 years and 2 months.	From 4 years 2 months and 1 day to 6 years.
34. *Presidio correccional* in its minimum degree.	From 6 months and 1 day to 2 years and 4 months.	From 6 months and 1 day to 1 year 1 month and 10 days.	From 1 year 1 month and 11 days to 1 year 8 months and 20 days.	From 1 year 8 months and 21 days to 2 years and 4 months.
35. *Presidio correccional* in its medium degree.	From 2 years 4 months and 1 day to 4 years and 2 months.	From 2 years 4 months and 1 day to 2 years 11 months and 10 days.	From 2 years 11 months and 11 days to 3 years 6 months and 20 days.	From 3 years 6 months and 21 days to 4 years and 2 months.
36. *Presidio correccional* in its minimum and medium degrees.	From 6 months and 1 day to 4 years and 2 months.	From 6 months and 1 day to 1 year 8 months and 20 days.	From 1 year 8 months and 21 days to 2 years 11 months and 10 days.	From 2 years 11 months and 11 days to 4 years and 2 months.
37. *Presidio correccional* in its medium and maximum degrees.	From 2 years 4 months and 1 day to 6 years.	From 2 years 4 months and 1 day to 3 years 6 months and 20 days.	From 3 years 6 months and 21 days to 4 years 9 months and 10 days.	From 4 years 9 months and 11 days to 6 years.
38. *Presidio correccional* in its maximum degree.	From 4 years 2 months and 1 day to 6 years.	From 4 years 2 months and 1 day to 4 years 9 months and 10 days.	From 4 years 9 months and 11 days to 5 years 4 months and 20 days.	From 5 years 4 months and 21 days to 6 years.
39. *Presidio correccional* in its medium degree to *presidio mayor* in the minimum.	From 2 years 4 months and 1 day to 8 years.	The medium degree of *presidio correccional.*	The maximum degree of *presidio correccional.*	The minimum degree of *presidio mayor.*

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40. *Presidio correccional* in its maximum degree to *presidio mayor* in its minimum degree.	From 4 years 2 months and 1 day to 8 years.	From 4 years 2 months and 1 day to 5 years 5 months and 10 days.	From 5 years 5 months and 11 days to 8 years 8 months and 20 days.	From 6 years 8 months and 21 days to 8 years.
41. *Presidio correccional* in its maximum degree to *presidio mayor* in its medium degree.	From 4 years 2 months and 1 day to 10 years.	The maximum degree of *presidio correccional*.	The minimum degree of *presidio mayor*.	The medium degree of *presidio mayor*.
42. *Presidio correccional* to *presidio mayor* in its medium degree.	From 6 months and 1 day to 10 years.	From 6 months and 1 day to 8 years and 8 months.	From 8 years 8 months and 1 day to 6 years and 10 months.	From 6 years 10 months and 1 day to 10 years.
43. Minimum degree of *presidio correccional* in its medium degree to *presidio mayor* in its minimum.	From 2 years 4 months and 1 day to 4 years and 2 months.	From 2 years 4 months and 1 day to 2 years 11 months and 10 days.	From 2 years 11 months and 11 days to 3 years 6 months and 20 days.	From 3 years 6 months and 21 days to 4 years and 2 months.
44. Maximum degree of *presidio correccional* in its minimum and medium degrees.	From 2 years 11 months and 11 days to 4 years and 2 months.	From 2 years 11 months and 11 days to 3 years 4 months and 7 days.	From 3 years 4 months and 8 days to 3 years 9 months and 3 days.	From 3 years 9 months and 4 days to 4 years and 2 months.
45. Maximum degree of *presidio correccional* in its medium to the maximum degrees.	From 4 years 9 months and 11 days to 6 years.	From 4 years 9 months and 11 days to 5 years 2 months and 7 days.	From 5 years 2 months and 8 days to 5 years 7 months and 4 days.	From 5 years 7 months and 5 days to 6 years.
46. Maximum degree of *presidio correccional* in its medium degree to *presidio mayor* in the minimum.	From 6 years and 1 day to 8 years.	From 6 years and 1 day to 6 years and 8 months.	From 6 years 8 months and 1 day to 7 years and 4 months.	From 7 years 4 months and 1 day to 8 years.
47. Maximum degree of *presidio correccional* in its maximum degree to *presidio mayor* in the minimum.	From 6 years 8 months and 21 days to 8 years.	From 6 years 8 months and 21 days to 7 years 1 month and 24 days.	From 7 years 1 month and 25 days to 7 years 6 months and 27 days.	From 7 years 6 months and 28 days to 8 years.
48. Maximum degree of *presidio correccional* in its maximum degree to *presidio mayor* in its medium degree.	From 8 years and 1 day to 10 years. (Medium degree of *presidio mayor*.)	From 8 years and 1 day to 8 years and 8 months.	From 8 years 8 months and 1 day to 9 years and 4 months.	From 9 years 9 months and 1 day to 10 years.
49. Maximum degree of *presidio correccional* to *presidio mayor* in its medium degree.	From 6 years 10 months and 1 day to 10 years.	From 6 years 10 months and 1 day to 7 years 10 months and 20 days.	From 7 years 10 months and 21 days to 8 years 11 months and 10 days.	From 8 years 11 months and 11 days to 10 years.
50. *Presidio: Prisión mayor*.....	From 6 years and 1 day to 12 years.	From 6 years and 1 day to 8 years.	From 8 years and 1 day to 10 years.	From 10 years and 1 day to 12 years.
51. *Prisión mayor* in its minimum and medium degrees.	From 6 years and 1 day to 10 years.	From 6 years and 1 day to 7 years and 4 months.	From 7 years 4 months and 1 day to 8 years and 8 months.	From 8 years 8 months and 1 day to 10 years.
52. *Prisión mayor* in its medium and maximum degrees.	From 8 years and 1 day to 12 years.	From 8 years and 1 day to 9 years and 4 months.	From 9 years 4 months and 1 day to 10 years and 8 months.	From 10 years 8 months and 1 day to 12 years.

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General table of the duration of penalties in all the forms and combinations prescribed in the code and their division into degrees—Continued.

Penalties.	Time included in the entire penalty.	Time included in its minimum degree.	Time included in its medium degree.	Time included in its maximum degree.
53. *Prisión mayor* in its maximum degree.	From 10 years and 1 day to 12 years.	From 10 years and 1 day to 10 years and 8 months.	From 10 years 8 months and 1 day to 11 years and 4 months.	From 11 years 4 months and 1 day to 12 years.
54. *Prisión mayor* in its medium degree to *reclusión temporal* in the minimum.	From 8 years and 1 day to 14 years and 8 months.	*Prisión mayor* in its medium degree (8 years and 1 day to 10 years.)	*Prisión mayor* in its maximum degree (10 years and 1 day to 12 years).	*Reclusión temporal* in its minimum degree (12 years and 1 day to 14 years and 8 months).
55. *Prisión mayor* in its medium degree to *reclusión temporal* to its full extent.	From 8 years and 1 day to 20 years.	From 8 years and 1 day to 12 years.	From 12 years and 1 day to 16 years.	From 16 years and 1 day to 20 years.
56. *Presidio mayor* in its medium degree to *cadena temporal* in its minimum degree.	From 8 years and 1 day to 14 years and 8 months.	From 8 years and 1 day to 10 years. (Medium degree of *presidio mayor.*)	From 10 years and 1 day to 12 years. (Maximum degree of *presidio mayor*).	From 12 years and 1 day to 14 years and 8 months. (Minimum degree of *cadena.*)
57. Maximum degree of *presidio mayor* in its medium degree to *cadena temporal* in its minimum degree.	From 12 years and 1 day to 14 years and 8 months. (Minimum degree of *cadena temporal.*)	From 12 years and 1 day to 12 years 10 months and 20 days.	From 12 years 10 months and 21 days to 13 years 9 months and 10 days.	From 13 years 9 months and 11 days to 14 years and 8 months.
58. *Reclusión temporal*.....	From 12 years and 1 day to 20 years.	From 12 years and 1 day to 14 years and 8 months.	From 14 years 8 months and 1 day to 17 years and 4 months.	From 17 years 4 months and 1 day to 20 years.
59. *Reclusión temporal* in its medium and maximum degrees.	From 14 years 8 months and 1 day to 20 years.	From 14 years 8 months and 1 day to 16 years 5 months and 10 days.	From 16 years 5 months and 11 days to 18 years 2 months and 20 days.	From 18 years 2 months and 21 days to 20 years.
60. *Reclusión temporal* to *reclusión perpetua.*	From 12 years and 1 day to *reclusión perpetua.*	From 12 years and 1 day to 16 years.	From 16 years and 1 day to 20 years.	*Reclusión perpetua.*
61. *Reclusión temporal* to death....	From 12 years and 1 day to death.	From 12 years and 1 day to 20 years.	*Reclusión perpetua*.....	Death.
62. *Reclusión temporal* in its maximum degree to death.	From 17 years 4 months and 1 day to death.	From 17 years 4 months and 1 day to 20 years.	.....do	Do.
63. *Reclusión perpetua* to death....	*Reclusión perpetua* to death	*Reclusión perpetua*.....	.....do	Do.
64. *Relegación temporal*.....	From 12 years and 1 day to 20 years.	From 12 years and 1 day to 14 years and 8 months.	From 14 years 8 months and 1 day to 17 years and 4 months.	From 17 years 4 months and 1 day to 20 years.
65. *Relegación temporal* in its maximum degree.	From 17 years 4 months and 1 day to 20 years.	From 17 years 4 months and 1 day to 18 years 2 months and 20 days.	From 18 years 2 months and 21 days to 19 years 1 month and 10 days.	From 19 years 1 month and 11 days to 20 years.

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66. Maximum degree of *relegación temporal* in its maximum degree.	From 19 years 1 month and 11 days to 20 years.	From 19 years 1 month and 11 days to 19 years 4 months and 25 days.	From 19 years 4 months and 26 days to 19 years 8 months and 13 days.	From 19 years 8 months and 14 days to 20 years.
67. *Relegación temporal* in its maximum degree to *relegación perpetua*.	From 17 years 4 months and 1 day to *relegación perpetua*.	From 17 years 4 months and 1 day to 18 years and 8 months.	From 18 years 8 months and 1 day to 20 years.	*Relegación perpetua*.
68. Suspension	From 1 month and 1 day to 6 years.	From 1 month and 1 day to 2 years.	From 2 years and 1 day to 4 years.	From 4 years and 1 day to 6 years.
69. Suspension in its minimum and medium degrees.	From 1 month and 1 day to 4 years.	From 1 month and 1 day to 1 year 4 months and 20 days.	From 1 year 4 months and 21 days to 2 years 8 months and 10 days.	From 2 years 8 months and 11 days to 4 years.
70. Suspension in its medium and maximum degrees.	From 2 years and 1 day to 6 years.	From 2 years and 1 day to 3 years and 4 months.	From 3 years 4 months and 1 day to 4 years and 8 months.	From 4 years 8 months and 1 day to 6 years.
71. Suspension in its maximum degree to temporary absolute disqualification in its minimum degree.	From 4 years and 1 day to 8 years.	From 4 years and 1 day to 5 years and 4 months.	From 5 years 4 months aud 1 day to 6 years and 8 months.	From 6 years 8 months and 1 day to 8 years.
72. Suspension in its maximum degree to temporary absolute disqualification in its medium degree.	From 4 years and 1 day to 10 years.	Maximum degree of suspension. (From 4 years and 1 day to 6 years.)	Minimum degree of disqualification. (From 6 years and 1 day to 8 years.)	Medium degree of disqualification. (From 8 years and 1 day to 10 years.)
73. Suspension in its medium and maximum degrees to temporary absolute disqualification in its medium degree.	From 2 years and 1 day to 10 years.	From 2 years and 1 day to 4 years and 8 months.	From 4 years 8 months and 1 day to 7 years and 4 months.	From 7 years 4 months and 1 day to 10 years.

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TRANSLATION OF THE LAW OF CRIMINAL PROCEDURE FOR CUBA AND PORTO RICO, WITH ANNOTATIONS, EXPLANATORY NOTES, AND AMENDMENTS MADE SINCE THE AMERICAN OCCUPATION.

WAR DEPARTMENT,
DIVISION OF INSULAR AFFAIRS,
OCTOBER, 1901.

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INTRODUCTORY NOTE.

The translator of the Code of Criminal Procedure in force in Cuba and Porto Rico begs to call attention to the fact that a large number of decisions of the Supreme Court of Madrid have been inserted as footnotes, which serve to elucidate the language of the text. These decisions are authoritative interpretations and in the Spanish courts have practically the force of law.

The references, also inserted as footnotes, calling attention to other laws in force, to royal decrees and military orders which modify the procedure prescribed by the code, it is thought will also aid in making the work of practical use, both for those who desire to inform themselves as to the methods of Spanish procedure and those called upon to practice before the courts in the islands of Cuba and Porto Rico.

At the suggestion of a number of attorneys, the Spanish text, taken from official editions of the law, has also been inserted for purposes of convenience.

The Cuban civil orders contained in the first appendix have been inserted as published by the respective authorities, and in many cases the English equivalents of the Spanish terms will be found to differ from those used by the translator in the text of the law.

An effort has been made to secure as correct a translation as possible, and in some cases the translator may be accused of sacrificing what may be called good English for fidelity to the original text. He has been constantly on his guard against making an interpretation of law instead of a translation.

FRANK L. JOANNINI.

I certify that the following is a copy of the translation of the Law of Criminal Procedure for Cuba and Porto Rico on file in the Insular Division of the War Department, made under its direction.

CLARENCE R. EDWARDS,
Chief of Division.

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LAW OF CRIMINAL PROCEDURE.

ADDRESS PRECEDING THE ROYAL DECREE OF SEPTEMBER 14, 1882, APPROVING THE PROPOSED CODE OF CRIMINAL PROCEDURE.

SIRE: The execution of the two laws promulgated by virtue of royal decrees of June 22 of this year presupposes a new code of penal procedure, a radical change in the organic law of the judicial power of September 15, 1870, the determination of the number and seats of the collegiate tribunals which are to take cognizance in first and last instance, and in oral and public trials of the crimes which may be committed within their respective territories, and, finally, the selection of the personnel of the said tribunals, the presiding judges of which must possess special qualifications for the direction and summing up of the cases.

A mere statement of these preparatory works is sufficient to show that neither by their character or nature, nor by their extent and exceptional importance, could they be concluded in a short time. The undersigned, nevertheless, has the pleasure of to-day informing Your Majesty that all of them can be considered as concluded, thanks to the patriotic assistance furnished to the Government by men eminent in the science of law and perfectly conversant with the topography of the country, census of the population, means of communication, and the criminal statistics of the territory of the Peninsula and adjacent islands.

The Government of Your Majesty does not propose to publish all these works at the same time, but, on the contrary, it deems it advisable first to promulgate the Code of Procedure in order that, until the criminal audiencias are established, it may be studied and known by the justices, judges, *fiscales*, attorneys, and other persons who are to contribute in a more or less direct and efficient manner to its establishment and application.

Its study will not be very difficult or require a long time, because, after all, the draft which the undersigned Minister herewith submits for the approval of Your Majesty is based upon the general compilation of October 16, 1879, in pursuance with the authority vested in the Government by the Cortes; but, nevertheless, the amendments introduced therein are so radical that it might be said with reason that it is an entirely new one as liberal and progressive as the most advanced code of criminal procedure on the European Continent.

Among these changes the less important are no doubt those suggested by experience, whose object is either to explain various more or less obscure and doubtful precepts of the compilation in force, to make the jurisprudence uniform, or, finally, to facilitate the use of some remedies and most especially the appeal for annulment of judgment, upon which the Supreme Court has made some very opportune

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and well-chosen remarks, which have naturally been received with the respect which that body deserves which is at the head of the Spanish judiciary, and which is by law the interpreter and guardian of the juridical doctrine.

The amendments of real and transcendent importance are those whose purpose it is to supply, as in preliminary questions, some substantial lack owing to which it has frequently occurred that the discretionary powers granted were so great, and more than that, even contradictory to jurisprudence; to correct the chronic vices of our traditional system of procedure, and to surround the citizen with the necessary guaranties, in order that in no case should individual rights be sacrificed to the poorly understood interests of the State.

Without ignoring the fact that the Constitution of 1812, the provisional regulations for the administration of justice of 1835, and other subsequent provisions greatly improved the criminal procedure, it would be unreasonable to deny that even under the legislation in force it is not unusual that the preliminary proceedings last eight or more years, and it frequently happens that they do not last less than two, the temporary imprisonment of the accused continuing in some cases this entire period; and it may further be added, in order to complete the picture, that these scandalous processes not so very long ago would sometimes be closed on account of lack of evidence, without anyone, in such case, indemnifying the accused persons for the inconveniences suffered for so long a period, and, what is more, the imprisonment would leave them for the rest of their life in an unpleasant and disgraceful condition, under the permanent menace of the proceedings being reopened any day that, through malice, any rancorous or vengeful neighbor should inform against them. This evil practice, which attacks the rights of individuals, is still kept under some disguise or other in our judicial customs; and it is necessary that it should be abolished forever, because a citizen of a free nation must not expiate faults of which he is not guilty, nor be the victim of the impotence or of the egoism of the State.

Although these are two capital vices, they are not, however, the only ones, nor even the most serious faults in our procedure. The worst of all is that the accused is not allowed to take part in the preliminary proceedings; that the judge who sits thereon is the same as the one who pronounces the sentence, with all the ideas and prejudices to which the investigation has given rise; that, civil and criminal matters being confounded, and the judges of first instance being overwhelmed by the accumulation of their multiple and various duties, frequently delegate the performance of many steps to the court clerk, who, alone with the accused and the witnesses, does not always correctly interpret the thought nor does he portray with perfect fidelity the testimony of each, no matter how zealous or how good may be his will; that, by the character itself of the things and the logic of the system, our judges and justices have acquired the habit of attributing little importance to the evidence introduced at the trial, forming their judgment upon the result of the preliminary proceedings, and do not pay particular attention to the ratification of the witnesses, which has become a mere formality; that in the absence of the accused and his counsel, the officials taking part in the preliminary proceedings, animated with a suspicious and hostile spirit, which is engendered by their patriotic zeal in the interests of the society they

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represent, give preference to the data against the accused, forgetting at the same time to record those which might favor him; and that, finally, from this number of errors in our system of procedure, and which can not be imputed, therefore, to the officials of the judiciary or to the public prosecutors, there result two things very unfavorable to the citizen: One, that in proportion as the preliminary proceedings advance, a network is being inadvertently woven which is later converted into a legal truth, but which is contrary to the facts, and causes the conscience of the accused to rebel, and the other, that when the latter wishes to defend himself at the trial he does nothing but uselessly contradict, because he enters the arena already defeated, or at least disarmed. It is necessary, therefore, to establish an equality of conditions in this juridical contest in so far as the essential ends of human society will permit.

Perhaps this criticism of the organization of our criminal justice may be considered exaggerated and unjust. Would that it were so. But the undersigned Minister is not master of his judgment, and is obliged to tell Your Majesty the truth as he feels it. Social evils are not cured by concealing them, but, on the contrary, by measuring their extent and depth and by studying their origin and nature, in order that the proper remedy may be applied. In the opinion of the undersigned, custom only can explain how the Spanish people, so civilized and cultured, and which has made such progress during the present century in the sciences, arts, and industries, and in political education, should resign itself to such a system, showing indifference or ignoring its vices and dangers, like those who breathe an unhealthy atmosphere and reach a point of asphyxiation without knowing it. A foreigner studying the organization of our criminal justice, in seeing us attached to a system out of date and which is discredited in Europe and in America, must necessarily form an unjust and false idea of Spanish civilization and culture.

What is to be examined, therefore, is whether the attached project for a code remedies, if not all, at least the most notable defects contained in the organization of criminal justice at present in force. It is necessary, in the first place, to substitute for the slow and lazy progress of the present procedure a system which, in giving full scope to the defense, and guarantees of certainty to the judgment, shall nevertheless assure a speedy trial, for the consummation of two ends of the greatest importance: One, that the fate of the citizen be not indefinitely held in suspense, and that not more inconveniences be caused him than are absolutely necessary for the investigation of the crime and the discovery of the guilty party, and the other that the punishment follow soon after the fault, for the purpose of its proper efficacy and example.

Consequently, Sir, I state herewith the measures which the new system affords for the attainment of such important results: The substitution for the two degrees of jurisdiction by the only instance, the oral character of the trial, separation of civil and criminal matters with regard to the sentencing tribunal; a similar separation with regard to the examining judges in certain largely populated towns where there is more than one judge of first instance and much crime; a considerable reduction in work with regard to the other judges, who are not required to take part in the trial, nor to pronounce sen-

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tence and give the reasons therefor, as unsurmountable reasons of economy do not permit the extension to them of said separation; a large number of rules of detail scattered here and there in the attached code, and especially in the first two books, in order that the examining judges in the examination of the witnesses and in the execution of the other steps in the investigation confine themselves exclusively to what may be useful and pertinent; and, finally, the intervention of the accused in all the steps of the preliminary proceedings as soon as the judge considers that the publicity of the proceedings will not compromise the public cause nor hinder the discovery of the truth. As a general rule no one has more interest than the accused in hastening the proceedings; and if his purpose were at any time to prolong the same the judge will prevent it, and especially the *fiscal*, to whom the right is given to demand the conclusion of the preliminary proceedings and the beginning of the oral trial before the collegiate tribunal. The continuous and systematic inspection provided for by this law, of the criminal audiencia and of the public department, as to the progress of the proceedings during the period of the investigation and of the conduct of the examining judges will also contribute to the same end. Finally, Book IV, must not be forgotten in treating of the brevity of the proceedings, which establishes special and summary proceedings for flagrant crimes as well as for the crime of outrage and calumny and for those committed through the press.

It may be that neither the commission on codes nor the Government, in their selection of means, have covered so interesting a point in the science of procedure; but the truth is that it has not been possible to find any other measures nor have any been suggested from an examination of modern codes carefully studied for this purpose.

The law of February 11, in the basis relating to provisional imprisonment, permits, by the flexibility of its terms, a considerable improvement in this part of our legislation without requiring the Cortes to amend the same. The legal text if well analyzed appears so elastic that it serves for the development of the basis in a strict and restrictive sense, as well as in one more ample, expansive, and liberal.

It appears unnecessary to add that the Government of Your Majesty has decided finally whenever it could do so without committing a transgression of law; as in the matter of bail, so intimately connected with all that relates to provisional imprisonment, it has attempted to harmonize the ends of justice with the rights of the accused, putting an end to the possible judicial arbitrariness and establishing equitable and prudent rules which permit a greater scope than allowed heretofore in the character and form of bonds as well as their amount.

It is likewise useless to state that a dismissal of the case for lack of evidence, this abuse which made of the citizen whom the State could not convict a kind of paroled prisoner for the rest of his life, a true serf of the parish marked with the stigma of dishonor, is proscribed and expressly prohibited by the new code, as it had previously been condemned by science, by the law of 1872, and by the compilation in force. It is to be hoped that the provisions of the new law will be sufficiently efficacious to prevent a similar practice from again being grafted in a more or less disguised form into our judicial customs.

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The other vices contained in the procedure in force will no doubt be corrected by the establishment of oral and public trials and the introduction of the accusatory system in the law of procedure.

The provisional regulations of September 26, 1835, and the subsequent provisions published during the reign of Your Majesty's August Mother, introduced, as has been said, evident improvements in the criminal procedure, but they did not alter its essentially inquisitive character. The laws of September 15, 1870, and December 22, 1872, inspired by the ideas of liberty proclaimed by the revolution of 1868, established a radical reform in our system of procedure by the establishment of oral and public trials, but they continued the inquisitive principle and the secret character of the procedure during the examining stage, following the example of France, Belgium, and other nations of the European Continent.

The undersigned Minister, in concurrence with his colleagues, has not hesitated to advise Your Majesty to take one more step upon the road of progress by extending, to a certain degree, the system of accusation to the preliminary proceedings themselves, which are, after all, the corner stone of the trial and sentence. Hereafter the investigating judge, on his own initiative and motion, may, or rather must, order that the record be made known to the accused from the moment when publicity and contradiction are not a danger to society, which is interested in the discovery of the crimes and in the punishment of the guilty parties. Should this not be done voluntarily within the period of two months from the date of the institution of the cause, the law gives the accused the right to request it, either to prepare his defense or to prevent by his vigilant intervention and the employment of legal remedies the indefinite extension of the preliminary proceedings. In any case, before and after the two months, he who is so unfortunate as to be subjected to a criminal proceeding will fully enjoy two precious rights, which can not but be greatly appreciated wherever personal rights are honored and revered: the first, the right to designate counsel to assist him with his advice and intelligent direction from the moment the indictment is found; and the second, the right to be present in person or through a representative at any judicial investigation, ocular inspection, autopsy, or chemical analysis—in fact, to be present at any expert measures which may be ordered, and which may affect the determination of the character and gravity of the crime or the clues of his presumed guilt.

The secret character of the preliminary proceedings, however, still continue; but only in so far as is necessary to prevent the disappearance of the traces of the crime, to collect and inventory the data which may be sufficient to prove its commission, and gather the elements which are later to be utilized and their truth ascertained in the crucible of contradiction during the formal arguments at the oral and public trial. And to such a point does the new law carry a spirit favorable to the sacred privileges of the defense, that it proscribes and condemns a preoccupation which, until the present time, has been very extensive, and which, although it might have been pardonable when the inquisitive procedure was at its height, would at the present time imply an ignorance of the character and nature of the system of accusation with which it is incompatible. The undersigned refers to that custom, so deeply rooted in our judges and courts, of giving little or no value to

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the evidence introduced during the trial, seeking the truth principally or almost exclusively in the most summary proceedings had behind the back of the accused. No; hereafter the investigations of the examining judge shall be nothing but a simple preparation for the trial. The true trial does not commence until the provisional classification and the beginning of the arguments before the tribunal which, apart from the examination, is going to judge impartially and decide in favor of the party having right and justice on his side. The provisional juridical classification of the fact to be judged and of the person of the delinquent, made by the accuser and by the accused upon the conclusion of the preliminary proceedings, is in criminal procedure what the complaint and answer, the action and the exceptions, are in the civil procedure. The juridical contention really begins at the time of their formulation, and it would be unpardonable if the law did not then establish a perfect equality of conditions between the accuser and the accused. The citizen and the State confront each other. The cause of society is sacred, no doubt, but individual rights are no less so. Among a truly free people a citizen must have in his hand efficient means to defend and preserve his life, his liberty, his fortune, his dignity, his honor; and, if it be to the interest of the inhabitants of a territory to assist the State in unrestrictedly exercising one of its most essential functions, which is that of punishing the violation of a penal law for the purpose of reestablishing the harmony of the law where it has been disturbed, the privileges of the innocent should never thereby be sacrificed, because, on the whole, social order, strictly speaking, is nothing more than the maintenance of the liberty of all and a reciprocal respect of individual rights.

Looking at things from this point of view, and accepting the fundamental idea that it is in the oral and public trial where the evidence is to be thoroughly sifted, where the parties must under an equality of conditions, state their charges and denials and where the justices are to form their convictions in order to pronounce their verdict, abstracting that part of the preliminary proceedings which can be reproduced in the trial, naturally and logically a question arose which is extremely serious and delicate; the question is, Whether the contradiction of a witness between his testimony given in the oral trial and that before the examining judge in the preliminary proceedings would in itself be a sufficient reason to subject him to a criminal action for the crime of giving false testimony? The Government, after mature deliberation, has decided in the negative. In adopting this solution it has, in the first place, given way to the requirements of logic, which does not permit that there be attributed to the data collected in the preliminary proceedings for the preparation of the trial a validity and efficiency incompatible with the character and nature of the accusatory system. This is by no means an authorization, and still less a sanction, of fraud and falsehood during the preliminary stage; such contradiction in the testimony of witnesses may be freely weighed by the judges and penetrate in the sanctuary of their conscience in case it should become necessary to pass upon the perjury of the witness; the only thing which the law desires is that the latter be not tried as guilty of false testimony only because he appears to contradict his statements at the preliminary proceedings, and only so tried when there are reasons to presume that he did not tell the

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truth at the trial; because as the latter is the arsenal where the accuser and the accused must receive their arms for the attack and the defense, and the tribunal the bases for its verdict, it is evident that definitely only in this stage can the witness favor or unjustly prejudice the accused and be loyal or a traitor to society and to his duties as a citizen. To this purely logical reason is added one of greater importance, which is that of facilitating the investigation of the truth and insuring the correctness of the decisions.

It would be useless to attempt to further the progress of science by abolishing the written, inquisitive, and secret procedure in order to substitute therefor the protective principles of liberty, contradiction, equality of conditions between the contending parties, publicity, and oral trials, if the witness, whose first impressions the judge has heard in silence, transferring them to the record with more or less fidelity, should appear at the trial before the sentencing tribunal and the public present at the discussions restrained and with tied hands by the recollection or the reading of his depositions in the preliminary proceedings. Fearing the criminal liability which he might incur upon the slightest contradiction, instead of answering offhand and with perfect ease the questions of the presiding judge, the representative of the department of public prosecution, and of the counsel, he would confine himself purely and simply to ratifying his statements, his examination in this formal act of the trial being converted into a mere formality. There has been a large number of distinguished writers and eminent jurists who in analyzing the conditions of the inquisitive procedure have strongly criticised the system of forcing the witnesses at the preliminary proceedings to ratify their depositions at the trial, with the assurance of being punished as perjurers if during the ratification they should waver from their previous statements. If this well-founded criticism were directed against a system in which the preliminary proceedings were the soul of the entire organism of the procedure, not to say the entire process, as the method in question at the present time is one of procedure in which the preliminary proceedings are a mere preparation for the trial, it being in the latter where the facts are to be arrived at and where all the questions involved in the cause are to be discussed, it is not possible to continue the former laws so inflexible and strict that, in curtailing the liberty and spontaneity of the witnesses, exposed to a prosecution originating in an unfaithful translation of their thought, they would at the present time openly conflict with the character of the accusatory system and with the essence and high ends of public and oral trials.

All these concessions to the principles of liberty, which to some of our judges and justices will appear no doubt exorbitant, will probably not satisfy certain radical schools which desire to extend to the preliminary proceedings from the instant they are instituted the rules of publicity, contradiction, and equality which the proposed code establishes from the time the trial is opened until the final sentence is pronounced. The undersigned does not deny that well-known writers support this opinion with ardor and with faith, but it can not be considered at present as more than an ideal of science which the positive legislation of modern countries is progressively approaching. Will it some day be fully realized? The undersigned Minister doubts it

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very much. It is difficult to establish an absolute equality of juridical conditions between an individual and the State at the very beginning of the proceedings, on account of the real inequality which at so critical a moment exists between one and the other—an inequality purposely introduced by the criminal and for which he only is responsible. From the moment that the idea of the crime is born in his mind, or at least from the moment that his conscience is perverted and he forms the deliberate intention of committing it, he carefully studies a number of precautions to escape the action of justice, and he places the public power in a position similar to that of the victim who receives the blow by surprise—defenceless and unprepared. Thus, in order to reestablish an equality of conditions for the contest, as it is claimed by the aforementioned writers that the criminal procedure must not be more than a duel nobly maintained by both combatants, it is necessary that the State have some advantages during the first moments, if it be only for the purpose of collecting the traces of the crime and clues to the guilt of its author. But, be this as it may, the truth is that the future only can decide whether this ideal will or will not be realized. In the meantime those who have the honor of directing the destinies of a people are obliged to be prudent and not countenance in the codes ideas which are still speculative, which have not matured in public opinion, and, still less, have not rooted themselves in the customs of the people, and have not stood the test of experience.

The Government of Your Majesty believes it to be in accordance with the liberal spirit of its policy to introduce, within certain reasonable limits, the accusatory system in the preliminary proceedings, which constitutes a great advance over the law of December 22, 1872. There is not a single nation upon the European continent which, on this point, goes further than the attached proposed code, not even Germany, on whose laws of procedure is stamped, as on tables of granite, the characteristic seal of Germanic individualism, without being wiped out either by the powerful authority of their monarchs, her glorious military victories, or her recent and portentous territorial aggrandizement.

The new code decides the other fundamental questions of the procedure upon the same basis. In penal matters there are always two rival and opposed interests; those of society, which has the right to punish, and those of the accused, who has the right to defend himself. The individualistic character of law is evident in the accusatory system, which includes both respect for the personality of man and liberty of conscience, while the *ex officio* and inquisitive proceeding represents the social principle, whose special object is the restoration of the juridical order which has been disturbed by the crime, quieting at the same time the popular alarm. Therefore, the problem of the organization of criminal justice is not correctly solved except by clearly defining the rights of the accusation and of the defense, without sacrificing either of the two or subordinating one to the other, but, on the contrary, by harmonizing them in one superior combination.

The preliminary proceedings being instituted *ex officio* or at the instance of a party by an official independent of the tribunal which is to pronounce the sentence; the examining judge being required by

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law to collect all information, favorable as well as unfavorable, to the accused, under the immediate supervision of the *fiscal*, of the private accuser, and, in so far as possible, of the accused or his counsel; a popular and public trial of the accusation being provided for, instead of confining it to the injured person and his heirs; the existence of the department of public prosecution being recognized and sanctioned and to which is entrusted the mission of taking the steps for the ascertainment of the crimes and the punishment of those guilty thereof; without, however, at the same time ignoring the defense of an innocent accused person, the result is that without danger to public or private interests, the duties of the tribunal may be restricted to the exercise of one attribute only—that of deciding as an impartial judge of the matter without being subject to evidence previously regulated by law; in fact, unrestrictedly following the dictates of his conscience exempt from the passions which are always raised by the struggle in the minds of the contestants and without the wounding of the *amour propre* which is engendered in the examining judge by the stratagems which the accused and the private accuser employ to frustrate his investigations, or even without this, by the ordinary difficulties which attend the investigation.

In order to sustain the tribunal in this serene and elevated sphere and not defeat the object of the accusatory principle which the new code provides, the undersigned is of the opinion that only the representative of the department of public prosecution or the private accuser, if there be any, should prepare the information, including therein the points which are to be argued thereafter, following herein the Austrian code of criminal procedure, which is perhaps of those actually in force in Continental Europe the one which has developed the accusatory system most extensively and logically. Thus it becomes possible to secure that the criminal question raised or argued in the proceedings shall go intact to the court which is to decide it. Thus the parties can prepare with a perfect knowledge of cause the respective elements of accusation and denials and make their accusation or defense with confidence and complete liberty, without the coercion, even though moral, which can not but exist when the person who is to pass judgment, to a certain extent prejudges the matter by himself drawing up the indictment, which naturally discourages the contestant who is prejudiced by a juridical classification which has been made prematurely, although only temporarily, by the tribunal. Nor are these the only objections to the admission of the indictment prepared *ex officio*, because after its preparation the public prosecutor is obliged to defend it against his convictions torturing his conscience, or he is left at liberty to combat it, in which case it does not become a contest between the parties, but only a discussion of the thought, the opinion, and the judgment of the tribunal, which, in this manner, enters the arena and becomes converted into an accuser at the imminent risk of the *amour propre* of the judges, confusing or disturbing their intellectual faculties. No; the judges must remain during the arguments passive, silent, and neutral, as did the judges of the ancient tournaments, confining themselves to the direction of the arguments with a serene deportment. Therefore, between the obligations imposed upon the public prosecutors in France and Germany, to draw up an indictment when this has been ordered by the respective tribunal, and the liberty which is granted said prosecutors by the Aus-

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trian law, the undersigned has selected the latter solution as the one offering the greater respect to the dictates of conscience, individual rights, and as being more in consonance with the fundamental principle upon which the accusatory system is based.

This principle, applied in full, nevertheless still contains one defect to which various judges who have grown gray in the administration of justice have called attention. The dismissal of the proceedings for lack of evidence being proscribed forever and the maxim *non bis in idem* ruling without exception, it is evident that an error committed by the prosecutor in the juridical classification of the punishable act secures immunity of the delinquent. It is advisable that in civil proceedings the tribunal shall have the obligation to acquit or condemn as well as to strictly adjust its decision to the terms in which the parties may have submitted the question in litigation; that is to say, to the complaint of the plaintiff and the exceptions pleaded by the defendant, because the questions which arise in these proceedings are of mere private interest, and because, furthermore, it frequently occurs that the error committed upon the institution of the action can be corrected totally or partially in a new proceeding, for which reason it is customary to make reservations of rights in the decision in favor of condemned; but in criminal actions which may be instituted at the instance of the Government, social interests and public peace are always in litigation, and as the tribunal has the obligation to convict or acquit freely without any reservation whatsoever, and without it being legal to institute a new proceeding upon the same question, it is unnatural to torture the conscience of the justices composing the tribunal to the point of placing them in the hard alternative of condemning the accused with the knowledge that they do not comply with the law, destroy its force, or acquit him with the conviction that he is a criminal, leaving him to insult with his presence and air of triumph the victim and his family, only because the public prosecutor did not know how or did not wish to qualify the crime in accordance with its character and the provisions of the Penal Code. At any rate it can not be denied that if the accusatory system and the passiveness of the tribunals goes to such an exaggerated extent, the latter abdicate in favor of the prosecutor, in whose hands justice remains intact. The fate of the accused depends not only on his skill, but also on his good or bad faith.

And supposing that some day the legislator, appealing to logic, should arrive at this furthermost limit of the accusatory system, the Government of Your Majesty has believed that the transition would be too sudden for this country in which the judges have been all powerful, prosecuting crimes on their own and voluntary initiative, investigating as well as passing upon the cases, exercising the power to ignore the reports of the prosecutors during the hearing as well as in the final sentence, classifying the crime according to their own judgment, and fixing the punishment without considering the conclusions of the accusation and defense, and finally dismissing the proceedings for lack of evidence, or, what is the same thing, leaving the proceedings indefinitely open when there being insufficient evidence to convict, the preliminary proceedings raised slight suspicions in their mind against the accused. Society must progress like nature—gradually; and not by leaps; juridical progress must develop step by step if it is to become grafted in the customs of the country. Therefore

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the Government recommends to Your Majesty the solution contained in article 733, which does not materially alter the potential character of the accusatory principle. According to the structure of the annexed law, upon the conclusion of the preliminary proceedings, the parties make a provisional classification of the questions which are the subject-matter of the action. The evidence taken during the entire action rests upon their conclusions, and upon the termination thereof, when nothing is left but the final arguments of the prosecutor and the counsel of the accused, they are both authorized to confirm, correct, or vary their first classification in view of the evidence. Upon reaching this stage everything is strictly terminated; the judges have heard the criminal and the witnesses; they have examined the other evidence, and are in a condition to weigh the character of the act which is the subject-matter of the trial fully and with a correct understanding. If at this moment they should entertain some serious doubt as to its true juridical classification, why should not the presiding judge of the court, hypothetically and only by way of illustration, invite the public prosecutor and the attorney for the accused, without prejudicing the definite decision, to discuss an additional thesis in their briefs? The accusatory principle would be violated if this additional thesis were not argued and decided in accordance with the evidence already taken, causing a postponement or reopening of the trial. But as the trial is already closed and it is not possible to review it, all that can take place is that the public prosecutor or the attorney be granted twenty-four hours for the purpose of arguing upon the hypothesis of the tribunal with sufficient preparation.

Although this power is so modest and restricted, the law nevertheless declares that it does not extend to private crimes or to those crimes which can be prosecuted only at the instance of a party, or to the classification of extenuating or aggravating circumstances, or to that of the respective participation of the persons accused in the commission of the crime, being thus reduced to meeting an urgent necessity originating in a public and social interest. Although confined to so narrow limits, the undersigned Minister would have renounced it and remained within the excessively severe accusatory principle if the most progressive and liberal codes of continental Europe had encouraged him with their example; but there is none which gives greater power to the intervention of the court in the trial. It has already been seen that in France and Germany the public prosecutor is obliged to prepare the indictment when ordered to do so by the proper court, and, furthermore, the said German law, as well as the Austrian law, leave him at liberty to weigh the act without subjecting himself to the classification thereof made by the parties, and without taking the precaution of submitting to said parties the new phase of the question in order that they may discuss it fully before the verdict is rendered. Before this formal argument, without the evidence in any case being amended or extended, the sentence could not be said properly to be incongruent, because the law in substance confines itself to establishing a means to supply the omission of the public prosecutor, whose duty it is to take charge of all the probable classifications which the evidence taken may authorize and which the tribunal may accept, preparing for this purpose the alternative claim referred to in article

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732, whenever necessary. The tribunal proposes, hypothetically and upon the basis of an unalterable proof, a theme for discussion a few moments before pronouncing its verdict, when each justice has already formed his definite opinion upon the vote which is to be cast. It is better, therefore, that he should cast his vote after an argument which may enlighten his mind and correct his judgment than not to authorize him to depart from the conditions argued by the parties and follow his own inspirations, which have not been brought together in the crucible of contradiction as authorized by the Austrian and German codes, notwithstanding the fact that they are the most advanced on the European Continent.

Such are, Sir, without speaking of many other amendments of lesser importance, although substantial, and evidently improvements in the method and preparation, the most weighty innovations introduced by the attached bill in our criminal procedure.

The undersigned Minister is not unaware of the fact that in the application and fulfillment of the new law, especially during the first years, serious difficulties will be encountered, the greatest of all being the absence of customs applicable to the accusatory system and to an oral and public trial. Spaniards having been educated for centuries in the written, secret, and inquisitive procedure, far from having gained confidence in justice and actively assisting in a proper administration thereof, and, as the British citizen, rendering useless the institution of the department of public prosecution for the discovery and punishment of crimes, have formed erroneous ideas as to the judicial policy, and have every day drifted further from the tribunals, looking upon the justices, judges, court clerks, and bailiffs with lamentable distrust, and disliking to appear in the proceedings as witnesses. But this evil will increase as time passes. And as the present state of affairs can not continue without discredit to the nation and the powers which govern it, the best thing to do is to decide, as it must be begun some time, whether Spain is to be an exception among the cultured peoples of Europe and America.

The Government of Your Majesty has such confidence in the special aptitude and the privileged conditions of our race that it believes that the apprenticeship will be short, not only in the application of this law, but even in the more delicate task of sharing with the judges the august mission of administering justice as a jury, and that very soon the Spanish subject will demonstrate that he is worthy of enjoying the same advantages as those enjoyed by foreigners.

In the attainment of so important and transcendental an end, the zeal and high character of our judiciary and of the department of public prosecution will no doubt contribute. It is not possible, Sir, to mount a delicate machine and successfully operate it unless the assent, the enthusiasm, the confidence, and the patriotism of those who are to manage it are to be trusted.

In view of the aforestated reasons, the undersigned Minister has the honor to submit for the approval of Your Majesty the attached bill.

San Ildefonso, September 14, 1882.

Sire, at the Royal Feet of Your Majesty,

MANUEL ALONSO MARTINEZ.

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COLONIAL DEPARTMENT.

ROYAL DECREE.

The Codification Commission of the Colonial Department having completed the modifications necessary in order that it may be possible to apply in Cuba and Porto Rico the law in force in the Peninsula on criminal procedure, in concurrence with said corporation, upon the recommendation of the Colonial Minister, and in pursuance of the authority vested in my Government by article 89 of the Constitution of the Monarchy, in the name of my August Son the King, Don Alfonso XIII, and as Queen Regent of the Kingdom,

I hereby decree the following:

ARTICLE 1. The Law of Criminal Procedure in force in the Peninsula, by virtue of a Royal Decree of September 14, 1882, is approved for the Islands of Cuba and Porto Rico, with the modifications recommended by the Codification Commission for the Colonies.

ART. 2. The new law shall go into effect in Cuba and Porto Rico on the first day of January, 1889, when the Criminal Audiencias will begin to act.

ART. 3. The causes for crimes committed prior to January first next, shall continue to be heard and determined in accordance with the provisions of the procedure in force at the present time.[a]

If the causes referred to in the foregoing article should not have reached the classification stage, they may be heard and determined in accordance with the provisions of the new law, if every one of the accused in each cause should choose the new procedure.[b]

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[a] The Jurisprudence of the Supreme Court with regard to the provisions of the same article of the Royal Decree of September 14, 1882, approving the law of criminal procedure in force in the Peninsula, which does not differ in any manner from the provision annotated, is contradictory, because while in decisions of September 3, October 24, 1884, and December 26, 1885, it declared that the courts existing before the organization of the new criminal audiencias are of competent jurisdiction in crimes committed up to October 15, 1882, even though the action should have been instituted subsequently to said date, provided that the accused should not have selected the new procedure; in another decision of August 4, 1887, it declared: "That it is a clear and final precept, contained in the rule which we annotate, that the causes for crimes committed subsequently to the 15th of October of the year mentioned must continue to be heard and determined in accordance with the provisions of the procedure in force at that time; and it appears, therefore, undisputable that it relates to the causes instituted before the said date, and in no manner to subsequent causes, even though the crimes should have been committed prior thereto."

[b] It is sufficient that *all* the accused *present* select the new procedure for it to be adopted in accordance with the rule we annotate. This was declared by the office of the *Fiscal* of the Supreme Court in instruction number 3, of those attached to the Memorial of September 15, 1883, deciding a question submitted to the same as to the application of a similar precept of the Royal Decree approving the law of the Peninsula, and the said Court confirmed it in its decisions, among which may be mentioned those of June 30 and December 23, 1883, according to which "only the accused present at the trial can be affected by the form of the procedure and the sentence closing it; and, therefore, the absence and default of the others with regard to whom it is suspended can not redound to the prejudice of those who, submissive and obedient to the law, find themselves in urgent necessity of defending themselves, and if the latter choose the new procedure the proper criminal audiencia is of competent jurisdiction, and not the territorial audiencia." In another decision, of August 12, 1884, it was

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For this purpose the judge who may be taking cognizance of the preliminary proceedings on the first day of January next shall order all the accused to appear before him, together with their counsel.

Should they not have counsel as yet, they shall be assigned to them at the motion of the court for the appearance.

This appearance shall be duly entered upon the record of the cause.

ART. 4. Judges of First Instance shall at once be considered as examining judges in the causes which are prosecuted in accordance with the new procedure.

ART. 5. As soon as the actual *promotores* cease in the discharge of their duties, the functions of the Department of public prosecution in causes which are being heard in accordance with the procedure in force at the present time shall be discharged by the municipal *fiscales* who may be attorneys, and, in their absence, by those whom the *fiscales* of the respective audiencias may designate.

ART. 6. The Administration Chambers of the Audiencias and the new Tribunals shall submit directly to the Colonial Department for its decision any doubts which may arise in the application of this Royal Decree.

Given in the Palace on October 19, 1888.

MARIA CRISTINA.

TRINITARIO RUIZ CAPDEPÓN,
Colonial Minister.

Book First.—GENERAL PROVISIONS.

TITLE FIRST.—PRELIMINARIES.

CHAPTER FIRST.—*General Rules.*

ARTICLE 1. No penalty whatsoever shall be inflicted as a consequence of punishable acts the punishment of which pertains to the ordinary jurisdiction, except in accordance with the provisions of this and other special laws, and by virtue of a sentence pronounced by a judge of competent jurisdiction.[a]

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stated that a cause having been prosecuted in accordance with the former procedure, a sentence rendered in first instance, a consultation being had with the higher court and the proceedings having been returned to the court of primary jurisdiction by order of the same, if the accused then choose the new procedure, the proper criminal audiencia is of competent jurisdiction, and not the Tribunals which existed prior to the creation of said audiencias.

[a] A Spaniard by the name of Joaquin Cupido having been extradited from Portugal and sentenced to death, interposed an appeal for annulment of judgment on the ground of the violation of article 1 of the extradition convention celebrated between Spain and Portugal on December 6, 1875, according to which criminals subject to the penalty of death shall be turned over only on condition that said punishment be commuted. The supreme court declares that the appeal does not lie:

"Considering that it does not lie within the power of courts to commute sentences, because a commutation supposes the previous imposition of the sentence to be commuted, and the power to freely select that which is to be imposed in lieu thereof, which is properly and exclusively a royal prerogative, it being within the jurisdiction of the administration of justice only to apply the penal law, without violating, in applying the same to criminals extradited from Portugal for a crime to which the code affixes the penalty of death, article 1 of

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ART. 2. All authorities and officials taking part in a criminal proceeding shall seek, within the limits of their respective jurisdictions, to record and consider all circumstances for and against the presumed criminal, and shall be obliged, in the absence of an express provision, to inform the latter of his rights and of the remedies he may employ, while without the services of counsel.

CHAPTER II.—*Preliminary questions.*

ART. 3. As a general rule, the jurisdiction of courts charged with penal justice extends to the decision, for the purposes of reprehension only, of the preliminary civil and administrative questions arising in connection with the acts prosecuted, when such questions appear to be so intimately connected with the punishable act that their separation is practically impossible.

ART. 4. Nevertheless, if the preliminary question be one involving a determination of guilt or innocence, the criminal court shall suspend the proceedings until the decision thereof by the proper person; but it may fix a period not to exceed two months, within which the parties may apply to the civil or administrative judge or court of competent jurisdiction.[a]

If said period shall expire without the person interested proving that he has availed himself thereof, the criminal court shall raise the suspension and continue the proceedings.

The prosecuting official shall be a party to these proceedings.

ART. 5. Notwithstanding the provisions contained in the two preceding articles, civil preliminary questions relating to the validity of a marriage or to the suppression of the civil status shall always be transmitted to the judge or court which is to take cognizance of the same, and his decision shall serve as a basis for that of the criminal court.

ART. 6. If the civil preliminary question shall relate to the right of ownership of real property or of another property right, the criminal court may decide thereon when such rights appear to be based on an authentic title or indubitable acts of possession.[b]

ART. 7. The criminal court shall conform to the rules of civil or administrative law, respectively, in the preliminary questions which it may be required to decide, in accordance with the preceding articles.

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the extradition treaty in force with the Portuguese Government, a precept, the observance of which will be proper, in accordance with the international agreement, after the said punishment has been imposed by a definite sentence."—*Second Chamber. Decision of April 15, 1884. Gaceta of September 28, page 158.*

[a] The following can not be appealed from for annulment of judgment:

(*a*) The decree temporarily suspending the proceedings against an accused person. (December 4, 1879.)

(*b*) Rulings as to the legality of the preliminary questions referred to in article 4 of the law, on account of not being included in article 850. (April 16 and June 5, 1888.)

(*c*) A decree temporarily suspending the proceedings. (April 9, 1887.)

[b] Articles 4, 5, and 6 are exceptions to articles 111 and 114, which, as a general rule, prohibit the separate institution of any civil action derived from the crime until the penal action has been decided which arose from the alleged punishable act.

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TITLE II.—JURISDICTION OF JUDGES AND COURTS IN CRIMINAL MATTERS.[a]

CHAPTER FIRST.—*Rules for determining jurisdiction.*

ART. 8. Criminal jurisdiction is never susceptible of prorogation.[b]

ART. 9. Judges and courts having jurisdiction of a specific cause shall also have jurisdiction of all its issues, to carry out decrees and enforce the execution of sentences.[c]

ART. 10. The cognizance of criminal trials and actions pertains to the ordinary jurisdiction, excepting such cases as are reserved by law to the Senate, to the army and navy tribunals, and to the administrative or police authorities.[d]

ART. 11. The ordinary jurisdiction shall take cognizance of criminal causes in which persons subject to the ordinary as well as to other special jurisdictions appear guilty, with the exceptions expressly mentioned in the laws with regard to the competency of another jurisdiction.[e]

ART. 12. Notwithstanding the provisions of the foregoing article, the ordinary jurisdiction shall always be competent to take the preliminary steps in causes involving crimes committed by persons subject to special laws.

This jurisdiction shall be confined to the first steps, upon the conclusion of which the ordinary jurisdiction shall transmit the proceedings to the judge or court which is to take cognizance of the cause in accordance to law, and shall place the persons detained and the effects seized at the disposal of the same.

The ordinary jurisdiction shall discontinue the first steps as soon as it becomes evident that the proper special jurisdiction has instituted proceedings on the same crime.

Decrees of inhibition of this character issuing from examining judges of the ordinary jurisdiction may be appealed from to the proper audiencia.

Until the appeal is heard and decided the provisions of the second paragraph of article 22 shall apply, for which purpose, as well as for

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[a] See G. O. No. 67, May 24, 1899; G. O. No. 88, June 27, 1899; G. O. No. 103, July 18, 1899; and G. O. No. 118, Aug. 16, 1899, headquarters Department Porto Rico.

[b] Prorogation of jurisdiction is that jurisdiction which is by the consent of the parties conferred on a judge otherwise incompetent, according to law 32, title 2, partida 3, and law 7, title 29, book 11 of the Novísima Recopilación. (Bell's Dic., 7th ed., p. 868.)

Prorogation of jurisdiction is prohibited in criminal matters, so that only the judge competent in accordance with the provisions of this law may take cognizance of crimes and misdemeanors which may be committed.

[c] As the supreme court declared in a decision of November 24, 1863, the execution of a sentence includes the exaction of the costs taxed in a cause, which are a penalty accessory to the principal one.

[d] The Senate has jurisdiction to enforce the liability of members of the cabinet who shall be accused by the Congress, in pursuance of the provisions of article 45 of the Constitution in force.

With regard to the competency of the army jurisdiction, see articles 10 to 17 of the law of military procedure of September 29, 1886.

Articles 21 and 22 of the said law mention the cases in which soldiers are subject to the ordinary jurisdiction.

[e] See articles 15 and 16 of the aforementioned law of military procedure.

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the hearing and determination of the appeal, the proper transcript shall be forwarded.[a]

ART. 13. The following are considered first steps: Those taken to protect the injured parties, record the evidence of the crime which may disappear, collect and place under custody all that may conduce to the proof thereof and to the identification of the delinquent, and, in a proper case, arrest the presumed criminals.

ART. 14. With the exception of the cases reserved to the Senate, and of those which are expressly and specially assigned by law to the supreme court, to the territorial audiencias, to the army and navy tribunals, and to the administrative or police authorities, the following shall have jurisdiction as a general rule:

1. Of actions for misdemeanors, the municipal judges of the district in which committed.

2. To investigate the causes, the examining judges of the judicial district in which the crime was committed.

3. To take cognizance of the cause and the respective trial, the criminal audiencia of the circuit where the crime was committed.[b]

ART. 15. When the place where a misdemeanor or crime has been committed is not known, the following judges and courts shall have jurisdiction, in a proper case, of the cause or trial:

1. That of the municipal or judicial district or circuit where material proofs of the crime have been found.

2. That of the municipal or judicial district or circuit in which the presumed criminal may have been apprehended.

3. That of the place of residence of the presumed criminal.

4. Any judge or court receiving notice of the crime.

If a question of jurisdiction shall arise between these judges or courts the decision rendered shall give the preference in the order mentioned in the preceding numbers.

As soon as the place where the crime was committed is known, the proceedings shall be forwarded to the judge or court within whose

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[a] With regard to appeals by the prosecuting official from decrees of inhibition, see note to article 25.

The supreme court declared in a decision of February 11, 1880, that the fact of a judge having begun to act in a cause and claimed jurisdiction thereof is not sufficient to grant jurisdiction; and in another, of August 5, 1886, that the ordinary jurisdiction is competent to institute proceedings relating to the suicide of a soldier.

[b] Do criminal audiencias or the respective chambers of the territorial audiencias have jurisdiction of causes instituted against municipal, examining, or judges of first instance, as well as against members of *Ayuntamientos* and administrative authorities of towns where there is no audiencia, or which are not the capital of a province?

The *Fiscalía* of the supreme court decides the doubt in favor of the criminal audiencias of the circuit where the crime was committed, first in the 69th instruction which accompanies the memorial of September 15, 1883, and subsequently in the circular of August 18, 1884.

In accordance with the opinion of the *Fiscalía*, the supreme court ruled in its decision of March 19, 1885, that the chambers of the territorial audiencias, in so far as crimes committed by examining judges are concerned, have jurisdiction only of those committed within the district assigned them, and that the new audiencias are exclusively competent to prosecute and punish those which may have taken place within their respective district (decision of February 23, 1885), and that, as the supreme court has repeatedly declared in an explicit and final manner, the jurisdiction of crimes committed by examining judges of their respective circuits pertains to criminal audiencias exclusively.

The said courts have jurisdiction of causes against municipal judges and prosecuting officials.

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district such place is situated, the persons arrested as well as the effects seized being held subject to orders of the same.

ART. 16. The ordinary jurisdiction shall be competent to judge persons guilty of connected crimes, provided that one of them is subject thereto, even if the others should be subject to special jurisdictions.

The provisions contained in the foregoing paragraph shall be understood without prejudice to the exceptions expressly mentioned in this code or in special laws, and particularly in the war and navy criminal laws with regard to specific crimes.

ART. 17. The following are considered connected crimes:

1. Those committed simultaneously by two or more persons together, provided that they are subject to the jurisdiction of different ordinary or special judges or courts, or who might be so on account of the nature of the crime.

2. Those committed by two or more persons at different places or times, if there shall have been a previous agreement between them.

3. Those committed as a means to perpetrate others or to facilitate their execution.

4. Those committed to secure immunity from other crimes.

5. The different crimes charged against an accused person upon the institution against him of an action for any of them, should there be analogy or relation between them, in the judgment of the court, and should they not have been the subject of proceedings to that time.

ART. 18. The following, in their order, are judges and courts which have jurisdiction of causes involving connected crimes:

1. That of the territory where the crime was committed to which a higher penalty is affixed.

2. The one first beginning proceedings, if equal penalties are affixed to the crime.

3. The one designated by the criminal audiencia or by the supreme court in their respective cases, when the causes were begun at the same time, or when it does not appear which was begun first.

CHAPTER II.—*Questions of jurisdiction between ordinary judges and courts.*[a]

ART. 19. Questions of jurisdiction may be raised and sustained by—

1. Municipal judges at any stage of the action, and by the parties between the citation and the hearing.

2. Judges of examination, during the sumario.

3. Criminal audiencias during the hearing of the trial.

4. The public prosecutor at any stage of the cause.[b]

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[a] The rules prescribed in this chapter for the hearing and determination of questions of jurisdiction, are not applicable when raised in causes against those guilty of flagrant crimes; in such cases the contest is curtailed, being heard and determined in accordance with the special procedure of article 782.

[b] *Right of the public prosecutor to raise a question of jurisdiction at any stage of the cause.*—This right includes the power to interpose an inhibitory or declinatory plea without any limitation whatsoever; and if he interposes the former plea between the conclusion of the sumario and the beginning of the oral trial, the procedure mentioned in article 23 can not apply. *December 26, 1885. (Gaceta of May 9, 1886.)*

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5. The private accuser, before filing his first plea, after having entered an appearance in the cause.

6. The accused and the civil party, whether appearing as plaintiff or defendant, within three days after the cause has been transmitted to them for classification.

ART. 20. The following are hierarchical superiors for the decision of questions of jurisdiction, in the manner prescribed by the following articles:

1. Of municipal judges of the same judicial district, the judge of examination.

2. Of judges of examination of the same circuit, the criminal audiencia.

3. Of criminal audiencias of the same territory, the territorial audiencia *in banc.*

4. Of territorial audiencias, or when the question of jurisdiction is between a criminal audiencia and the criminal chamber of a territorial audiencia, the supreme court.

When any of the judges or courts mentioned in numbers 1, 2, and 3 shall have no immediate common superior, the question of jurisdiction shall be decided by the hierarchical superior, and in the absence of the latter, by the supreme court.[a]

ART. 21. The supreme court can not institute or raise a question of jurisdiction, nor can any judge, court, or party question its jurisdiction.

If any judge or court shall take cognizance of a question, jurisdiction of which is reserved to the supreme court, the latter shall order the former, *ex officio*, on motion of the public prosecutor or of a party, that it discontinue further proceedings and forward the same, on or before the second day, for the proper decision.

The supreme court may nevertheless authorize in the same order, until the question of jurisdiction is settled, the continuation of such proceedings the urgency or necessity of which is apparent.

There shall be no remedy against the decision of the supreme court.

ART. 22. When two or more examining judges consider themselves as having jurisdiction of a matter, if upon the first communication they should not agree as to the jurisdiction, they shall make a report to the proper superior, forwarding a transcript,[b] and the latter shall decide *eo instanti*, in view thereof and without further remedy, which of the examining judges shall have jurisdiction.

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[a] The decision of a question of jurisdiction between two courts situated within the district of the same territorial audiencia, but one of them belonging to the circuit of a criminal audiencia, pertains to the supreme court. The basis for this doctrine is that "as the criminal chamber of a territorial audiencia forms part of the audiencia *in banc*, it would become a judge and party" if said territorial audiencia should decide the conflict. (*Third chamber, decision of June 28, 1888. Gaceta of the 30th.*)

[b] This precept, applicable to negative questions of jurisdiction by virtue of article 46, does not permit the transmission to the superior of the original proceedings, because in such case it would be impossible to continue the necessary proceedings to prove the crime and its circumstances. (*Decision of September 20, 1886.*) But if, notwithstanding this, they forward the original proceedings, such irregularity does not permit of a declaration that the question of jurisdiction is not well taken. (July 17, 1884.)

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Until a decision is rendered, each of the examining judges shall continue the proceedings necessary to prove the crime and any other proceedings which he may consider of recognized urgency.[a]

After the conflict has been decided by the proper superior, the judge of examination who discontinued proceedings shall forward the proceedings had, and the objects gathered, to the judge declared competent, within two days after receiving the superior order to cease taking cognizance thereof.

ART. 23. If during the sumario the public prosecutor or the private accuser shall consider that the examining judge has no jurisdiction to proceed in the cause, they may object before the proper superior court, which, after the investigation it considers necessary, shall decide *eo instanti* without further remedy.[b]

In any case the provisions of the second paragraph of the foregoing article shall be complied with.

ART. 24. Upon the conclusion of the sumario, any question of jurisdiction raised shall stay the proceedings until it is decided.[c]

ART. 25. The judge or court considering itself competent must raise the question.

It shall also grant the inhibition in favor of the competent judge or court when it considers that it has not jurisdiction of the cause even though the persons interested or the public prosecutor have not previously pleaded thereto.

The decrees of municipal or examining judges inhibiting themselves in favor of another judge or jurisdiction may be appealed from, in which case the provisions of the last paragraph of article 12 shall be observed. An appeal for annulment of judgment lies from decrees of audiencias.[d]

ART. 26. The public prosecutor and the parties shall raise the question of jurisdiction by an inhibitory or declinatory plea.

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[a] From the moment that a court has knowledge that another court has begun a cause involving the same matter of which it is taking cognizance, it must not render a definite decision before requesting an inhibition; otherwise the decision rendered will not be an obstacle to the decision of the question of jurisdiction. (*Third chamber, decision of April 29, 1878.*)

[b] An appeal for annulment of judgment is therefore inadmissible. (*Decisions of June 27 and December 3 and 31, 1884.*)

[c] A question of jurisdiction can not be raised as to the cognizance of a cause which has already been definitely decided. (*Decisions of July 8, 1878.*)

[d] When must the public prosecutor appeal from the decrees of inhibition referred to in this article and in article 12?

"If the public prosecutor has been heard before the issue of said decree, and his opinion should have been accepted by the respective judge or audiencia, no appeal can be taken.

"If the public prosecutor should not have had any intervention, or should have opposed the issue of said decree, he must then appeal therefrom, if it issued from a municipal or examining judge.

"With regard to the decisions of a collegiate tribunal, an appeal for annulment of judgment must be taken if there is a legal cause therefor." (*No. 5 of the memorial of the staff of the public prosecutor of the supreme court of September 15, 1883, and 10 of that of September 15, 1886.*)

In a decision of November 14, 1883, the supreme court declared that an appeal for annulment of judgment does not lie from a decree of a judge declining the jurisdiction of a cause in favor of the war jurisdiction, because an ordinary appeal lies therefrom according to article 25 of the law of criminal procedure, which is not affected by article 50, because the latter provision relates to a case where a true question of jurisdiction exists or is liable to arise, and not when a judge voluntarily or upon the first demand or request addressed to him deems himself incompetent and consents to his inhibition, without such a question arising and having to be decided, unless the persons interested seek the remedy

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The employment of one of these remedies absolutely excludes the employment of the other, both during the hearing of the question as well as after its decision.

The inhibitory plea shall be interposed before the judge or court considered competent.

The declinatory plea before the judge or court which considers itself as not having jurisdiction.

ART. 27. The municipal judge before whom the inhibitory plea is interposed, after hearing the public prosecutor, if interposed by another party, shall decide before the second day whether the writ of inhibition shall issue.

A decision overruling the plea may be appealed from for review and for a stay of proceedings to the proper examining judge.[a]

ART. 28. If the municipal judge should be of opinion that the inhibition is well taken, he shall issue a writ in which he shall state the reasons for his decree.

The writ must be transmitted within twenty-four hours.

ART. 29. The municipal judge sought to be inhibited, after receiving the opinion of the public prosecutor, shall decide before the second day whether he abstains from proceeding in the cause or whether he defends his competency.

In the former case he shall forward the proceedings had to the inhibiting judge within the next twenty-four hours.

If he maintains his jurisdiction, he shall communicate it to him within the same period, stating the reasons for his decision.

ART. 30. After the record has been received by the inhibiting judge he shall declare without further proceeding and within twenty-four hours whether he insists upon his jurisdiction or abandons it.

In the former case he shall so communicate within a similar period to the judge sought to be inhibited in order that he may forward the proceedings to the judge or court which is to decide the jurisdiction, in accordance with the provisions of article 20, and the judge requesting the inhibition shall forward his within the following twenty-four hours.

In the latter case he shall communicate it the same day to the judge sought to be inhibited in order that he may continue the proceedings.

The decisions of the judges sought to be inhibited consenting to the inhibition may be appealed from to the respective examining judge. Those of the judges requesting the inhibition desisting therefrom may also be appealed from in the same manner.

ART. 31. After the proceedings have been received by the judge or court which is to decide the jurisdiction and after the opinion of the

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of law granted them by the said article 32 and appeal to the immediate superior, and the latter determines that he shall sustain his jurisdiction, and that the matter be heard and determined in the manner and by the persons prescribed in the said title.

[a] Is the signature of an attorney necessary to the inhibitory plea presented to municipal courts? Arts. 27 to 32, which relate to questions of jurisdiction between said courts, do not demand this requisite, which, on the other hand, is imposed as necessary by article 33 to interpose an inhibition before *criminal courts*, in which sentence we do not know whether municipal courts should be included. With regard to the prior laws the supreme court has decided the doubt to the effect that the signature of an attorney was indispensable to the inhibitory plea as it is required, without any distinction of cases, by art. 365 of the judicial organic law. (*Decisions of September 24 and March 5, 1877.*)

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public prosecutor has been received within the two days following, a decision shall be rendered within three days after the prosecuting officials submit their report.

An appeal for annulment of judgment lies from the decision of the court or audiencia.

There is no remedy whatever against the decision of the Supreme Court.

ART. 32. When a declinatory plea is interposed before a municipal judge he shall render a decision thereon before the expiration of two days, after hearing the public prosecutor as to whether the plea is or is not well taken.

A decree overruling the inhibition may be appealed from for review and for a stay of proceedings to the judge to whom the decision of the jurisdiction pertains, who shall hear and determine the appeal in the manner prescribed in the first paragraph of the foregoing article.

An appeal for annulment of judgment lies from the decision of the court.

ART. 33. Inhibitory pleas before criminal courts shall be in writing and signed by an attorney.

The person interposing said plea shall state that he has not interposed a declinatory plea. Should the contrary appear the costs shall be taxed against him, even though the question of jurisdiction be decided in his favor or he should subsequently abandon it.

ART. 34. The court before which the inhibitory plea is interposed shall hear for a period of one to two days, according to the volume of the cause, the prosecuting officials, if the latter should not have interposed it, as well as the other parties appearing in the cause which the court is hearing before which the plea for inhibition has been interposed and in view thereof, it shall issue, within the next two days, a writ of inhibition, or shall overrule the plea.

ART. 35. An appeal for annulment of judgment only lies against a decree denying a writ of inhibition.[a]

ART. 36. Attested copies shall be attached to the writ of inhibition, of the petition requesting it, of the statements of the prosecuting officials, and of the parties, in a proper case; of the decision rendered, and of anything else which the court may consider proper upon which to base its jurisdiction.

The attested copy shall be prepared and forwarded within the unextendible period of one to three days, according to the volume of the cause.

ART. 37. The court sought to be inhibited shall at once acknowledge receipt, and after hearing the prosecuting officials, the private accuser, should there be any, the person or persons undergoing trial, and those who appear as civil parties, for a period which shall not exceed twenty-four hours for each one, shall issue a decree inhibiting himself or declaring that there is no reason for so doing.

There shall be no remedy but an appeal for annulment of judgment from decrees of a court inhibiting itself.

ART. 38. After the decision by which a court has inhibited itself has been consented to or executed, the cause shall be forwarded,

[a] This article refers to decrees denying a writ of inhibition by criminal courts and not to those issued by judges of first instance in matters of their jurisdiction. (*Decision of April 28, 1883.*) No appeal lies from the decision which denies an appeal. (*Decision of February 10, 1880, Third Chamber.*)

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within a period of three days, to the court which proposed the inhibition, with a summons of the parties and holding the accused at the disposal of the former as well as the material evidences of the crime and the goods seized.

ART. 39. If the inhibition should be refused, the decree shall be communicated to the court demanding the inhibition, with transcript of the statements of the prosecuting officials and of the parties, and of anything else which may be deemed proper.

The transcript shall be issued and transmitted within three days.

In the communication of transmittal it shall be required that the court demanding the inhibition answer immediately, in order to continue the proceedings if the inhibition be not insisted upon, or that otherwise the cause be transmitted to the proper person for a decision as to the jurisdiction.

ART. 40. After the communication mentioned in the foregoing article has been received, the court that proposed the inhibition shall render a decision before the expiration of two days, without further proceedings.

From a decree abandoning an inhibition an appeal for annulment of judgment only lies.

ART. 41. After the ruling by which the court desists from the inhibition has been consented to or executed, it shall be communicated within a period of twenty-four hours to the court sought to be inhibited, transmitting at the same time all proceedings had for attachment to the cause.

ART. 42. If the court demanding the inhibition defends its competency, it shall communicate the same within a period of twenty-four hours to the court sought to be inhibited, in order that it may transmit the record to the court which is to decide the question; and it shall do the same with its own record.

ART. 43. Questions of jurisdiction shall be decided by the court within the three days following that on which the public prosecutor may have given his opinion, which he shall do within a period of two days.

An appeal for annulment of judgment lies from these decrees when issuing from territorial audiencias.

Against those of the supreme court there is no remedy whatsoever.

ART. 44. The court deciding the question of jurisdiction may tax the payment of the costs occasioned by the plea of inhibition against the parties who have defended or opposed the same with marked persistence, deciding, in a proper case, the proportion each shall pay.

If there be no special condemnation of costs made, those occasioned in deciding questions of jurisdiction shall be understood to be *ex officio*.

If a court without legal cause properly proved, shall go beyond the limits prescribed in this title for the hearing and determination of questions of jurisdiction, it shall be corrected and disciplined according to the gravity of the case.

ART. 45. Declinatory pleas shall be heard and determined in the same manner as interlocutory issues.[a]

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[a] The procedure for the hearing and determination of interlocutory issues is fixed by articles 666 to 679.

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CHAPTER III.—*Questions of negative jurisdiction and those raised by special judges or courts and complaints against administrative authorities.*

ART. 46. If the question of jurisdiction raised between two or more judges or courts be negative by all refusing to take cognizance of the cause, the superior judge or court, or, in a proper case, the supreme court shall decide it, observing therein the procedure prescribed for other questions of jurisdiction.

ART. 47. In case of negative jurisdiction between the ordinary and a special jurisdiction, the ordinary jurisdiction shall begin or continue the cause.

ART. 48. Questions of jurisdiction raised by secular courts against ecclesiastical judges or tribunals shall be heard and decided according to the procedure and in the manner established in Title III of Book I of the Law of Civil Procedure.[a]

ART. 49. When ecclesiastical judges or tribunals shall consider that they have jurisdiction of a cause of which a secular judge or court is taking cognizance, they may interpose an inhibitory plea, and if it should be overruled they may complain to the proper court, which, after hearing the public prosecutor, shall decide without further remedy what it may deem proper.

ART. 50. Questions of jurisdiction between ordinary and any special courts, not ecclesiastical, shall be heard and determined according to the provisions of this title in all cases by the supreme court.

ART. 51. Questions of jurisdiction raised by the administration against judges or courts of the ordinary jurisdiction, and the complaints which the latter may make against the administrative authorities, shall conform to the provisions of section 4, Title II, Book I, of the Law of Civil Procedure.[b]

TITLE III.—CHALLENGES AND EXCUSES OF JUSTICES, JUDGES, ASSESSORS, AND ASSISTANTS OF SUPERIOR AND INFERIOR COURTS, AND THE ABSTENTION OF THE PROSECUTING OFFICIALS.

CHAPTER I.—*General provisions.*

ART. 52. Justices, judges, and assessors, whatever be their grade or rank, may be challenged only for a legitimate cause.

ART. 53. In criminal matters only the following persons are permitted to challenge:

The prosecuting officials.

The private accuser or his legal representatives.

The accused.

Those civilly liable for a crime or misdemeanor.

ART. 54. Legitimate causes of challenge are:

1. Relationship by consanguinity or affinity within the fourth civil degree to any of the persons mentioned in the foregoing article.

2. The same relationship within the second degree to the attorney of any of the parties to the cause.

3. To be or have been denounced or accused by any of said parties

[a] This title treats of civil remedies against actions of ecclesiastical courts (Arts. 125 to 152 of the Law of Civil Procedure in force in Cuba and Porto Rico).

[b] Articles 116 to 124 of the law cited.

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as the principal, accomplice, or accessory to a crime or as a principal in a misdemeanor.[a]

4. Having been counsel for any of the parties, given a professional opinion on the case or any of its incidental issues, or having appeared in either as prosecutor, expert, or witness.

5. To be or have been the private denouncer or accuser of the challenging party.

6. To be or have been the tutor or curator of any of the parties to the cause.

7. To have been under the tutorship or guardianship of the parties mentioned in the foregoing number.

8. To have an action pending against the challenging party.

9. To have a direct or indirect interest in the cause.[b]

10. Intimate friendship.

11. Manifest enmity.

12. Having conducted the preliminary investigation.

ART. 55. The justices and judges included in any of the cases mentioned in the foregoing article shall abstain from taking cognizance of the cause without waiting to be challenged. No remedy lies against this resolution.

In like manner they shall decline jurisdiction without remedy whatsoever when, on being challenged in any manner, they shall consider the alleged cause to be well founded. In either case they shall order the record to be transmitted to whosoever should substitute them.

ART. 56. The challenge may be interposed at any stage of the proceedings, but not after the oral trial has commenced, unless the cause of challenge shall have arisen thereafter.

CHAPTER II.—*Hearing and decision of challenges of judges of examination and justices.*

ART. 57. The challenge shall be in writing and signed by an attorney, by a solicitor, and by the challenging party, if he knows how to sign, and should be at the place where the cause is pending. The petition must be ratified by the latter before the judge or court.

If the challenging party be not present, only the attorney and solicitor shall sign. In every case the cause of challenge shall be stated clearly and explicitly.

ART. 58. Notwithstanding the provisions of the foregoing article, the accused may, should he be *incomunicado*, interpose the challenge orally when his declaration is received, or he may call the judge through the warden of the prison in order to challenge him.

In such case the judge of examination must present himself, accompanied by the secretary, who shall make a record of the written challenge and the cause therefor.

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[a] In order that there may exist a motive for the challenge in this case, it is necessary that the denunciation shall have all the requisites and produce all the effects necessary to proceed, by virtue thereof, with the proof of the acts included therein, according to a decision of the Supreme Court of April 12, 1886.

[b] In order that the cause for challenge under this number may be considered, it is necessary that the judge have a personal and direct interest in the cause from which this incident arises. (*Decision of April 12, 1886.*)

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If the challenge be overruled, he shall be advised that he can renew the same when the *incomunicación* is raised.

ART. 59. A decree sustaining or overruling a challenge shall state the reasons therefor, and it shall be sufficient to notify the solicitor of the challenging party thereof, even though the latter be in the town in which the cause is being prosecuted and had signed the written challenge.

ART. 60. If the person challenged does not inhibit himself, not considering that he is included in the causes alleged for the challenge, he shall order a separate record to be prepared.

Said record shall contain the original written challenge and the ruling denying the inhibition, an entry being made of all this in the original record.

ART. 61. While the separate record is being heard and determined the person challenged can not act in the cause nor in the issue of the challenge, and shall be substituted by the proper person in accordance to law.

If the person challenged be a judge of examination, he must, nevertheless, under his own liability, take such urgent measures as can not be delayed until his successor takes charge of continuing the examination.

ART. 62. The challenge shall not delay the course of the cause unless the issue of the challenge shall not have been decided when the parties are cited for the hearing of some question or interlocutory issue or for the oral trial.

ART. 63. The separate record of challenge shall be prepared—

By the senior presiding justice of chamber if the person challenged be the presiding judge or a presiding judge of a chamber of a territorial audiencia or of the supreme court; and if the judge challenged be the senior, by the one next below him in seniority.

By the senior justice of the criminal chamber of the territorial audiencia if the person challenged be the presiding judge of a criminal audiencia.

By the senior justice of the respective chamber or court if the person challenged be a justice of a criminal or territorial audiencia or of the supreme court; and if he be the senior, by the one next below him in seniority.

If, as a result of the challenge of one or more justices of the criminal audiencias, these courts should not have members sufficient to form a quorum, the preparation of the separate record shall pertain to the junior justice of the criminal chamber of the respective territorial audiencia.

The junior justice of the respective audiencia shall prepare the record of challenge when the judge of examination is challenged.

ART. 64. After the separate record has been prepared, the other party or parties to the cause shall be heard for a period of three days for each one, which period can only be extended for two days more when in the opinion of the court there be just cause therefor.

ART. 65. When the period fixed in the foregoing article has elapsed, as well as the extension in a proper case, and the cause is taken up again without the necessity of a petition by the challenging party, evidence on the issue of the challenge shall be admitted for eight

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days if the question be a question of fact, during which time the evidence submitted by the parties and admitted as pertinent shall be received.

ART. 66. There shall be no remedy against rulings of audiencias or of the supreme court admitting or rejecting evidence.

ART. 67. If, on account of the question being one of law, evidence on the challenge is overruling, or when the period granted in article 65 has elapsed, the parties shall be cited, a day being fixed for the argument.

ART. 68. The challenge shall be decided—

By the court *in banc*, if the person challenging be the presiding judge or a presiding judge of a chamber of a territorial audiencia or of the supreme court. Like procedure shall be observed if the persons challenged be two or more justices of the same chamber or section of said courts.

In other cases these issues shall be decided by the courts or chambers to which the examining justices of the separate record belong.

ART. 69. The decision sustaining or overruling the challenge shall always state the reasons therefor.

An appeal for annulment of judgment lies from a decision rendered by an audiencia.

There shall be no remedy whatsoever against a decision rendered by the supreme court.

ART. 70. Decisions overruling a challenge shall contain the taxation of the costs of the same against the person interposing it.

There shall also be imposed on the challenging party a fine of not less than 125 pesetas nor more than 250 pesetas if the authority challenged be a judge of examination, and not less than 250 nor more than 500 pesetas if a justice of the audiencia.

The prosecuting officials shall be exempt from the payment of costs or the fine.

ART. 71. If the fines respectively mentioned in the foregoing article are not paid, the party fined shall be subject to such proper compulsion in substitution thereof as provided for crimes in the penal code.

CHAPTER III.—*Hearing and decision of challenges of municipal judges.*

ART. 72. In trials for misdemeanors the challenge shall be interposed at the time of the appearance.

ART. 73. In view of the challenge, should the cause alleged be of those mentioned in article 54, and be true, the municipal judge shall consider himself challenged, transferring the cognizance of the misdemeanor to his substitute.

ART. 74. If the challenged party should not consider the challenge to be legitimate, he shall transfer the cognizance of the issue to his substitute, making note thereof in the record.

Neither in this case nor in that of the foregoing article shall there be any remedy against the decision of the municipal judge.

ART. 75. The municipal judge challenged cannot take part in the hearing and determination of the issue of the challenge, and shall suspend the trial for the misdemeanors until the question of the challenge is decided.

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ART. 76. The substitute judge charged with the hearing and determination of the issue of the challenge shall order the parties to appear before him, and shall at once hear the evidence they may offer and which he may consider pertinent, if the question be one of fact.

If a decision ruling out the evidence is made, a rehearing may be requested as soon as the parties are notified thereof.

ART. 77. The evidence having been taken, or when a question of law being involved it is not necessary, the substitute municipal judge shall decide at once, if possible, whether the challenge is or is not well taken in a ruling stating the reasons for his decision. In no case shall he fail to render a decision within two days.

The proceedings had and the ruling shall be entered upon the record made.

ART. 78. There shall be no remedy against a ruling of a substitute judge sustaining a challenge.

From a decree overruling a challenge an appeal lies to the judge of examination.

ART. 79. The appeal shall be interposed orally at the appearance for decision before the substitute judge, should he render a decision at once.

If, in order to render a decision, he should take the period of two days, the appeal shall be filed at the time of the notification, provided it be personal; otherwise within the twenty-four hours following the notification. The appeal in such case shall also be interposed orally before the clerk of the court, and it shall be made a matter of record.

ART. 80. If an appeal be not taken within the periods prescribed in the foregoing article, the ruling of the substitute judge shall become final.

If the appeal be taken in due time, the proceedings shall be forwarded to the proper judge of examination, with a citation of the parties, at the expense of the appellant.

ART. 81. In the court of examination the clerk shall immediately make a report without admitting any documentary evidence, and the parties shall be cited to appear within a period of two days.

With the permission of the judge of examination the parties in interest or their attorneys may make orally at that time whatever remarks they may consider proper.

The judge of examination shall render his decision the same day or the day following, and against his decision there shall be no further remedy.

If the judge of examination should hold that the substitute municipal judge should reverse his ruling denying the admission of evidence, referred to in the second paragraph of article 76, he shall so declare, refraining from deciding the main question, and order the proceedings to be returned to the municipal court from which they were forwarded, in order that the evidence offered be taken and a new ruling made.

The provisions of articles 78 to 81 shall apply to this ruling.

ART. 82. If the ruling be affirmative, the appellant shall be taxed the costs thereof.

ART. 83. If the challenge be sustained by a final ruling, the substitute judge shall take cognizance of the case.

If overruled, the challenged judge shall again take cognizance of the offense.

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CHAPTER IV.—*Challenges of assistants of inferior and superior courts.*

ART. 84. The clerks of municipal courts, courts of examination, of audiencias, and those of the supreme court may be challenged.

The officers of chambers may also be challenged.

ART. 85. The provisions of this title are applicable to the clerks and officers of chambers with the modifications prescribed in the following articles.

ART. 86. If the challenged parties be the assistants of courts of examination, of audiencias or of the supreme court, the issue of the challenge shall be prepared by the proper judge of examination or the junior associate justice, and shall be decided by the same judge or by the corresponding court.

The judge or associate justice of examination may delegate the performance of the proceedings which he cannot personally conduct to the municipal judge, or to one of the judges of examination of the respective circuit.

ART. 87. The assistants challenged cannot take part in the cause nor in the issue of the challenge, being substituted by the proper persons if the challenge be sustained.

ART. 88. In challenges of clerks of municipal courts the municipal judge shall prepare and determine the issue of the challenge where there is but one judge.

Should there be two, the judge of the court to which the challenged party does not belong; and if there be three or more, by the eldest.

ART. 89. If the challenge be overruled, the challenging party shall be taxed the costs.

ART. 90. When a ruling sustaining a challenge becomes final, the party challenged can take no part in the cause whatever, the person who was substituted for him during the hearing and determination of the issue continuing to take his place; and if he be the clerk of a municipal court or court of examination he shall receive no fees of any kind from the time that the challenge was interposed, or when the alleged cause being known to him he did not abstain from taking cognizance of the subject.

ART. 91. If the challenge be overruled by a final decision the assistant challenged shall again perform his duties; and should he be the clerk of a municipal court or court of examination the challenging party shall pay to him the fees corresponding to the proceedings had in the cause, and a similar payment shall be made to his substitute.

ART. 92. The assistants can not be challenged after the parties have been cited to appear for judgment, nor while engaged in some proceeding intrusted to them, nor after the oral trial has begun.

ART. 93. To relators and copyists of chambers are applicable: First, the provisions of the foregoing articles with regard to challenges of clerks in chambers; and, second, the provisions of articles 90 and 91 with reference to the payment of fees.

CHAPTER V.—*Excuses and challenges of assessors.*

ART. 94. The assessors to municipal judges, when the latter accidentally discharge the duties of judges of examination, shall excuse themselves if they be embraced in any of the causes mentioned in article 54 of this law.

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The municipal judge himself shall weigh the excuse in order to admit or reject it. Should he reject it, the assessor may appeal in complaint to the proper audiencia, and the latter, after calling for reports and data, shall decide *eò instanti* without further remedy, what it may deem proper.

ART. 95. The parties to a cause may challenge the assessor for any of the causes mentioned in article 54.

The challenge shall be in writing, addressed to the municipal judge.

From the decision of the municipal court overruling a challenge, an appeal in complaint lies also to the proper audiencia.

CHAPTER VI.—*Abstention of prosecuting officials.*

ART. 96. Prosecuting officials can not be challenged; but they shall abstain from intervening in judicial acts when they are included in any of the causes mentioned in article 54 of this law.

ART. 97. If the public prosecutor of the supreme court or the public prosecutors of audiencias be included in any of the causes by reason of which they should abstain, according to the provisions of the foregoing article, they shall appoint as their substitutes the deputy public prosecutor, and in his absence the assistant deputy public prosecutors, in the order of their rank and term of service.

The provisions of the foregoing paragraph are applicable to the deputy or assistant deputy public prosecutors when they discharge the duties of their respective chief.

ART. 98. The deputy and assistant deputy public prosecutors of the supreme court and of the audiencias shall submit their excuses to the proper superior, who shall relieve them from taking part in the judicial proceedings, and shall select as a substitute the person he may deem proper from among their subordinates.

ART. 99. When the prosecuting officials do not excuse themselves, notwithstanding their being included in any of the causes mentioned in article 54, those who consider themselves injured may appeal in complaint to the immediate superior.

The latter shall hear the subordinate who may have been the object of the complaint, and if he shall find it proper shall order his substitution. If he shall not find it proper he may order him to appear in the case. There shall be no remedy against this decision.

The public prosecutors of the territorial audiencias shall decide the complaints addressed to them against the public prosecutors of the criminal audiencias.

If the public prosecutor of the supreme court be the subject of the complaint, it must be addressed to the Minister of Grace and Justice through the chief justice of the said court. The Minister of Grace and Justice after hearing the chamber of administration of the supreme court, should he consider it necessary, shall decide what he may deem proper.

TITLE IV.—PERSONS WHO MAY EXERCISE RIGHTS OF ACTION ARISING OUT OF CRIMES AND MISDEMEANORS.

ART. 100. A criminal action arises from every crime or misdemeanor for the punishment of the culprit, and a civil action may also

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arise for the restitution of the thing, the repair of the damage, and the indemnity of the losses caused by the punishable act.[a]

ART. 101. A criminal action is public.

All Spanish citizens may bring a criminal action according to the provisions of law.

ART. 102. Notwithstanding the provisions of the foregoing article a criminal action can not be brought by:

1. A person not in the full enjoyment of civil rights.[b]

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[a] Criminal actions, by reason of their character and in accordance with the principles of law, can never be extended, but, on the contrary, must be understood and applied always in a restricted manner. (*Supreme Court, decision of June 3, 1894.*)

[b] Without attempting a full enumeration, the persons who can not appear in an action, and consequently who can not grant powers of attorney to others to appear in their behalf, unless it be with the intervention of their legal representatives, are the following:

Minors who are orphans are legally represented by their guardians (*Civil Code, art. 262*), who in certain cases require the consent of the family council. (*Ibid., 269, Nos. 12 and 13.*) If the interests of the tutor are opposed to those of the orphan, as, for example, in the case of number 9 of article 237 of the Civil Code, the representation of the minor in court pertains to the *protutor.* (*Ibid., 236, second par.*)

Children not emancipated are represented by their parents (*Civil Code, art. 155*), and when said parents have an interest which is incompatible with that of their children the latter shall be represented by the next friend referred to in article 165, which is equivalent to the former curator *ad litem* referred to in articles 1852 to 1860 of the Law of Civil Procedure. If the parents are deprived of the parental authority, or if it be suspended (*Civil Code, articles 70, paragraph 3; 73, par. 2 of number 2, and 168 to 171*), the tutor appointed shall represent the children.

Minors emancipated by the concession of the father or mother are represented in court by their parents, or, in their absence, by *one* tutor. (*Articles 314, number 3, and 317 of the Civil Code.*)

Minors who obtain the benefit of majority by concession of the family council are represented by *one* tutor. (*Civil Code, articles 322 to 324 and 317*, referred to.)

Married persons over 18 years of age may appear in person in court in their own name and in that of their wives, according to articles 59 and 315 of the Civil Code, which must be understood in this manner, because the emancipation referred to in article 317 relates to that of number 3 of article 314.

Persons suffering interdiction or undergoing a sentence. (See articles 228, 229, 262, 269, numbers 12 and 13, and 274 of the Civil Code, and the proper articles of the Penal Code.)

The deaf and dumb and the insane are legally represented by their guardian or, in a proper case, by the next friend appointed by the court or by the public prosecutor. (*Civil Code, articles 215, paragraph 3; 262, 269, numbers 12 and 13, and 274.*)

In *actions relating to prodigals*, when the defendant does not appear, he shall be represented by the public prosecutor or, in a proper case, by the next friend appointed by the court. (*Civil Code, article 223.*)

Married woman.—The case in which she does and does not require the permission of her husband to appear in an action are mentioned in articles 60 and 1387 of the Civil Code.

Bankrupts.—After a declaration in bankruptcy the bankrupts are disqualified from administering any of their property (*1161 of the law of Civil Procedure and 1914 of the Civil Code*), and consequently are deprived of the full exercise of their civil rights. The depositary-administrator is the legal representative of the estate of the bankrupt (*law, art. 1181*) until trustees are appointed. After this has been done the trustees represent the bankrupt in court, defending his rights and taking the actions and exceptions incumbent upon them. (*Ibid., article 1181, rule 1.*)

Judicial persons (*corporations, associations, and other judicial entities*).—Towns and municipalities are represented by the *procuradores síndicos*, and in

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2. A person who has been twice condemned by a final sentence as guilty of the crime of calumnious denunciations or complaints.

3. The judge or justice.

Those included in the foregoing numbers may, however, bring a criminal action for a crime or misdemeanor committed against their persons or property, or against the persons or property of their spouses, ascendants, descendants, uterine brothers or sisters, or relatives by consanguinity or affinity.

The persons included in numbers 2 and 3 may also bring a criminal action for a misdemeanor or crime committed against the persons or property of those who may be under their legal care.

ART. 103. Nor can the following persons bring criminal actions against each other:

1. Spouses, except for a crime or misdemeanor committed by one against the person of the other or that of his or her children,[a] and for the crimes of adultery, concubinage, and bigamy.

2. The ascendants, descendants, the uterine brothers or sisters, or relatives those by consanguinity or affinity, unless for a crime or misdemeanor by either against the persons of the others.

ART. 104. Nor can penal actions which arise from the crimes of seduction, calumny, and contumely be instituted by other persons or in a different manner than those prescribed in the respective articles of the Penal Code.

Misdemeanors consisting in a notice in the press of false facts or which relate to the private life, by which individuals are prejudiced or offended, in the ill treatment of wives by their husbands, the disobedience of or the ill treatment by wives of their husbands, lack of respect and submission of children to their parents, or of pupils to their tutors, and in slight acts of contumely, can only be prosecuted by the persons offended or by their legitimate representatives.

ART. 105. The public prosecutors are obliged to institute, according to the provisions of law, all criminal actions which they may consider proper, whether there be a private accuser or not in the causes, except in those which the Penal Code reserves exclusively to private complaints. They shall also institute them in causes for crimes against chastity, which, according to the provisions of the Penal Code, must first be denounced by the persons interested, or when the public prose-

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towns annexed to others in order to constitute a municipality, the presidents of their administrative boards also represent the respective towns, when actions or rights are involved which pertain exclusively to the said towns. (*Articles 56 and 90 of the law of 1877, and Royal order of January 30, 1875.*)

Provinces were represented by the provincial deputy, appointed for the purpose in accordance with article 37 of the law of September 25, 1863; afterwards they were represented by the governor, in accordance with articles 9 and 70 of the law of October 2, 1877, and now they are represented by the vice-president of the provincial commission, in accordance with article 98, number 6, of the law of August 29, 1882.

The public treasury has been represented by the department of public prosecution in the manner prescribed by the decree of July 9, 1869, and by the order of the same date; but since the decree of March 16, 1886, it is represented by the state attorneys.

[a] The words of this article do not signify that the crime which is the subject of the complaint must be of those which the Penal Code denominates crimes against the person in Title VIII, Book II (parricide, assassination, homicide, infanticide, abortion, injuries inflicted with violence, and dueling), but the law refers to a state when the act offends a person related to the guilty person, which may be prosecuted at the instance of the person injured, even though the crime be an outrage. (*March 2, 1885—Gaceta of October 4.*)

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cutor should himself denounce them, because said crimes are committed against helpless persons or those lacking personality.[a]

ART. 106. A criminal action for a crime or misdemeanor which gives rise to proceedings *ex officio* is not extinguished by the withdrawal of the complaint by the person offended.

Actions which arise from a crime or misdemeanor which can only be prosecuted at the instance of a party, and civil actions, whatever be the crime or misdemeanor involved, are extinguished for this cause.

ART. 107. The abandonment of the civil action or of a criminal action which can be abandoned shall only prejudice the person who abandons it; the other persons interested in the cause being permitted to continue the criminal action in the state it was, or institute a new one.

ART. 108. The civil action must be brought jointly with the criminal action by the prosecuting official, whether there be a private accuser or not in the cause; but if the person offended shall expressly renounce his right to restitution, repair, or indemnity, the prosecuting official shall confine himself to requesting the punishment of the guilty parties.

ART. 109. As soon as the declaration of an offended party having the necessary legal capacity has been received, he shall be informed of his rights to become a party to the action and to renounce or not the restitution of the thing, repair of the damage, and indemnity for the loss caused by the punishable act.[b]

Should he not have the legal capacity, the same information shall be communicated to his representative.

Aside from the cases provided for in the two foregoing paragraphs, no notice shall be served upon the parties interested in civil or criminal actions which shall prolong or delay the course of the cause, which, however, is not an obstacle to the judge informing the absent person offended of his rights.

ART. 110. Those prejudiced by a crime or misdemeanor who shall not have renounced their rights may enter an appearance in the cause, should they do so before the classification of the crime, and exercise the proper civil and criminal actions, or either, as they may desire, without, however, causing any retrogression in the course of the proceedings.

Even if the persons prejudiced do not enter an appearance in the cause, it shall not be understood that they thereby renounce the right to restitution, repair, or indemnity which may be granted them by final sentence, it being necessary that the renunciation of this right be made in a proper case in an express and positive manner.

ART. 111. The actions which arise from a crime or misdemeanor may be instituted jointly or separately; but during the pendency of the criminal action the civil action can not be brought separately until the former has been decided by a final sentence, excepting always the provisions of articles 4, 5, and 6 of this code.

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[a] In compliance with the provisions of article 467 of the Penal Code in force in the islands of Cuba and Porto Rico, the prosecuting officials are obliged to bring a criminal action in the crimes of abduction and adultery referred to therein.

[b] The obligation of informing the parties to a cause of their right is established not only with regard to those injured by the crime but also in favor of the presumed criminals, according to article 2.

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ART. 112. If the criminal action only is instituted, it shall be understood that a civil action may also be brought, unless the person injured or prejudiced renounces the same or expressly reserves the right to institute it after the conclusion of the criminal action, if necessary.

If only the civil action arising from a crime which can be prosecuted only on a private complaint is instituted, the criminal action shall thereby be considered as extinguished.

ART. 113. The two actions may be expressly instituted by the same or by different persons; but should the actions derived from a crime or misdemeanor be instituted by two or more persons, they shall do so in one proceeding, and if possible with the same counsel, in the discretion of the court.

ART. 114. If a criminal action is brought to investigate a crime or misdemeanor, a suit can not be prosecuted in the same; the proceeding being suspended, should any be pending, in the state in which it may be, until final sentence has been pronounced in the criminal cause.

It shall not be necessary for the institution of the criminal action that it shall have been preceded by the civil action arising from the same crime or misdemeanor.

The provisions of this article shall be understood without prejudice to those of Chapter II, Title I, of this book, with reference to preliminary questions.

ART. 115. A criminal action is extinguished by the death of the culprit; but in such case a civil action still lies against his heirs and successors in right, which can only be brought in a civil court and through civil channels.[a]

ART. 116. The extinction of the criminal action does not carry with it the extinction of the civil action, unless the extinction be caused by a final sentence declaring that the act on which a civil action might be based did not exist.

In other cases the person having a right of civil action may institute before the civil jurisdiction, and through the proper civil channels, an action against the person who may be obliged to restore the thing, to repair the damage, or indemnify the losses suffered.

ART. 117. Nor does the extinction of the civil action extinguish the criminal action resulting from the same crime or misdemeanor.

A final judgment absolving from liability rendered in the suit brought by the exercise of the right of civil action, shall not bar the exercise of the proper right of criminal action.

The provisions of this article are to be understood without prejudice to the provisions of Chapter II, Title I, of this book, and of articles 106, 107, 110, and the second paragraph of article 112.

TITLE V.—THE RIGHT OF DEFENSE AND THE BENEFIT OF POVERTY IN CRIMINAL CAUSES.

ART. 118. The persons accused must be represented by a solicitor and defended by an attorney, whom they may appoint as soon as they are notified of the indictment. If they do not designate them themselves or should they not have the legal power to do so, they shall be appointed *ex officio*, upon their request. If the accused should not have designated a solicitor or attorney, he shall be

[a] This article is substantially a repetition of articles 125 and 132, subd. 1, of the Penal Code.

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required to do so they shall be appointed *ex officio*, if they should not have been appointed by him when the cause reaches a stage where he needs their counsel or some step should be taken wherein their intervention is necessary.[a]

ART. 119. The persons injured by the punishable act, or their heirs, who may be parties to the action, if they have been declared as entitled to defend *in forma pauperis*, shall also have the right to have a solicitor and attorney appointed *ex officio* to represent and defend them.

ART. 120. The attorneys whose duty it is to defend the poor can not excuse themselves therefrom, except for a personal and just cause, which shall be passed upon according to the prudent judgment by the deans of the college, where there is such, and in their absence by the judge or court before which the defense is to be made.

ART. 121. All parties to a cause, if not declared poor persons, shall be obliged to pay the fees of the solicitors who represent them, of the attorneys who defend them, of the experts testifying in their behalf, and of the witnesses which they present, if the experts and witnesses at the time of testifying shall have filed their claim and the judge or court shall have allowed it.

Neither during the cause nor after its termination shall they be obliged to pay the other costs of the proceedings, unless adjudged to pay them.

A solicitor who, being appointed by those who are parties to a cause, agrees to represent them, shall be obliged to pay the fees of the attorneys of whose services their clients avail themselves for their defense.

Those who have been declared poor persons may select their own attorney, but in such case they shall be obliged to pay his fees, as is provided with regard to those who are not declared poor persons.

ART. 122. Official stamped paper shall be employed in trials for misdemeanors and in criminal causes, without prejudice to the proper payment therefor, should there be an adjudgment upon costs.

ART. 123. Only the following can be permitted to prosecute and defend as poor persons:

1. Those who depend for a living upon an uncertain wage or salary.
2. Those who depend for a living upon a permanent salary or wage, from whatsoever source derived, which does not exceed double that received by a laborer in the locality of his habitual residence.
3. Those who depend for a living solely upon rents, farming, or stock raising, the proceeds of which do not exceed the wages of two laborers in the place of their habitual residence.
4. Those who gain their livelihood solely through the exercise of an industry or from the product of any commerce on which they pay a tax lower than that fixed in the following scale:

In the city of Havana, 150 pesetas.

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[a] Attorneys are obliged to defend poor persons. A disciplinary penalty having been imposed upon an attorney, for which superior and inferior courts have authority, as he still refused to accept the defense of a poor person when it was his turn to do so, he was tried and convicted as guilty of grave disobedience, in accordance with the provisions of article 265 of the Penal Code, and upon taking an appeal for annulment of judgment it was disallowed, it being held that said article had not been violated. (*Decision of March 7, 1887.*)

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In the capitals of the other provinces of the island of Cuba, 100 pesetas.

In the capital of the island of Porto Rico, 100 pesetas.

In the seats of the judicial districts of the islands of Cuba and Porto Rico, 50 pesetas.

In the other towns of both islands, 25 pesetas.

5. Such persons whose entire property has been attached, or who have made a judicial assignment thereof to their creditors, and who are not engaged in any industry, trade, or profession.

In such cases, if any property shall remain after the creditors have been paid, it shall be applied to the payment of the costs incurred at the instance of the debtor defended as a poor person.[a]

ART. 124. If a person has two or more of the means of livelihood mentioned in the foregoing article, the court shall include all of them in the computation of the income, and permission to prosecute and defend as a poor person shall not be granted him if the total thereof exceeds the amounts fixed in the foregoing article.

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[a] (*a*) This article must be understood as subordinated to article 125, and therefore it is proper to refuse the benefit if the court shall deduce from visible signs of wealth that the applicant has means which exceed double the wages of a laborer.—*Decisions of the Supreme Court of February 18, 1870; September 22, November 18 and 21, 1879; January 10, March 29, and June 24, 1880; February 11, 1881; December 15, 1883, and others.*

(*b*) An appeal for annulment of judgment does not lie from a decision granting permission to prosecute or defend as a poor person.—*Decision of May 10, 1881.*

(*c*) A person who lives solely on a pension of 20 reales per day, left him by will for himself and his three children, must be granted this right.—*Decision of October 25, 1880.*

(*d*) In order to decide whether the person requesting permission to prosecute or defend as a poor person who has acted in his own name is entitled thereto or not, the tax which he pays as the manager of an association can not be taken into consideration.—*Decision of September 9, 1882.*

(*e*) The refusal to grant the benefit can not be based on the fact that the person interested should pay an industrial tax of 40 pesetas per annum, although he does not do so, the courts being obliged to consider only whether the tax is or is not paid without being allowed to declare that it should or should not be paid, which is a matter of the exclusive jurisdiction of the administration.—*Decision of October 31, 1884.*

(*f*) The habitual residence referred to in article 15 of the Law of Civil Procedure, for the purposes of the benefit of poverty, must be that which the person interested has at the time he requests said benefit, and not the place where he may have resided for a longer period in former times.—*Decision of May 30, 1883.*

(*g*) All litigants shall be considered wealthy until they prove the contrary.—*Decision of November 12, 1883.*

(*h*) It is incumbent upon the litigant to prove the amount of the wages of a laborer in his locality.—*Decision of June 3, 1887.*

(*i*) The children born of a first marriage of a woman whose husband is wealthy are entitled to the benefit of poverty, because the conjugal property of the second marriage is not liable for the litigation instituted in the interest of the issue of the first marriage.—*Decision of April 18, 1893.*

(*j*) The benefit of poverty is individual and does not extend, therefore, to any collectivity, such as industrial and commercial associations, unless each and every one of their members prove that they are poor.—*Decisions of April 15, 1879; June 3, 1880, and July 9, 1881.*

(*k*) A person who is deprived of his property by virtue of a judicial attachment, and retains the products and rent thereof, can not allege that *all* his property is attached, as required by number 5 of article 15 of the Law of Civil Procedure, for the purpose of securing the benefits of article 13 and 14 thereof.—*Decision of October 14, 1886.* The same is the case when the property is mortgaged or given as security.—*Decision of September 18, 1865.*

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ART. 125. Permission to prosecute and defend as a poor person shall not be granted to a person in any of the cases mentioned in article 123 when in the judgment of the court it is inferred from the number of domestics in his service, the rent of his residence, or from any other visible signs that his means exceed an amount equal to twice the wages of a laborer in his respective locality.

ART. 126. Neither shall permission to prosecute and defend *in forma pauperis* be granted to a litigant who enjoys an income which, added to that of his spouse, or to the proceeds from the property of his children, the usufruct of which he enjoys, amounts altogether to a sum equivalent to the wages of three laborers at the place of habitual residence of the family.[a]

ART. 127. When several persons individually entitled to defence *in forma pauperis* unite in an action, they shall be authorized to litigate as such, even though the united means of livelihood of all of them exceed the amounts prescribed.

ART. 128. The declaration of poverty shall be requested of the judge or court taking cognizance of the cause. The decisions of these issues by examining judges may be appealed from to their respective hierarchical superiors.

ART. 129. The hearing and determination of a petition for defence *in forma pauperis* shall be conducted in a separate record, observing the procedure prescribed for issues of this character in the law of civil procedure, without, however, its prosecution interfering with the initiation or continuation of the cause.

ART. 130. Notwithstanding the provisions of the foregoing article, the person who is known to be included in any of the cases mentioned in article 123, may obtain permission to prosecute or defend as a poor person without proving his right thereto, should the prosecuting official or the party to the issue not object, for which purpose the decree granting the privilege shall be communicated to them.

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[a] (*a*) The privilege to prosecute or defend as a poor person shall not be granted to a woman who has a wealthy husband, because the duties inherent to the marriage affect the latter.—*Decision of June 3, 1865.*

(*b*) Neither shall it be granted to the woman who receives an income which, together with that of her husband, is equivalent to the wages of two laborers (now of three) in the locality where they reside.—*Decisions of June 17, 1865; September 18, 1865; January 26, 1869; and November 16, 1881.*

(*c*) In legal proceedings between spouses the unity of person and litigant disappears, and, as a necessary consequence, the income of each can not be added together, nor can the external signs be considered in common for the purpose of obtaining a sum of money, nor signs of wealth which do not exist separately; but in such cases the poor woman having a wealthy husband has a right to require the husband to make her an allowance for the purpose of paying the costs of her action, and even though the litigation with her husband extinguishes the personal unity, it does not extinguish the right of the wife to enjoy the common income which the husband retains.—*Decision of June 14, 1887.*

(*d*) When the father is wealthy, the son who is under his power can not be granted permission to litigate as a poor person with a third party, because, although the right to defend as a poor person is personal, this principle does not exclude the necessity of taking into consideration the attendant circumstances in special cases, as is the case with persons whose rights are inseparable from those of others, such as married women and persons under the paternal or maternal power, and others—*Decision of February 16, 1876.*

A decision of September 21, 1888, repeats the doctrine that the benefit can not be granted to a wealthy father, in a legal sense, to appear in an action in the name of his poor children, because the duty to defend the property of the children in court is inherent to the parental authority.

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The person who may have obtained a declaration of insolvency may also be granted such privilege, without prejudice to the objection which the public prosecutor or the other party may make.

If objection be made, the issue shall be heard and determined in a separate record according to the provisions of the foregoing article.

ART. 131. A person filing a petition *in forma pauperis* shall have the right to have granted to him the legal benefits thereof immediately, without prejudice to what may be definitely decided.

ART. 132. If the private accuser files the petition, the issue shall be heard and determined with a citation and hearing of the accused, if he be undergoing trial and is not in default.

ART. 133. A petition *in forma pauperis* filed by the accused shall be heard and determined with the citation and a hearing of the private complainant and the civil plaintiff, if there be any.

ART. 134. The public prosecutor shall be a party to all proceedings *in forma pauperis*.

ART. 135. The accused, who has neither been cited nor heard in the issue of the poverty of the complainant, may at any stage of the proceedings object to the privilege granted him.

ART. 136. A person who has not been declared poor during the sumario, whether he requested it or not, may be so declared during the oral trial, if he shall prove that subsequently he was included in any of the cases mentioned in article 123.

The provisions of the foregoing paragraph shall be applicable to a person who, in order to appeal for annulment of judgment, should file a petition *in forma pauperis* before the Supreme Court, which had been denied him during the course of the cause, as well as to the person who until then may not have filed such petition.

Whenever the petition be denied, the petitioner shall be taxed the costs thereof.

ART. 137. From a final decision of a criminal court denying a petition *in forma pauperis*, only an appeal lies for annulment of judgment.

ART. 138. A person declared poor is not obliged to pay the respective salaries and fees of the attorney and solicitor who may have defended and represented him *ex officio*, nor the fees and indemnities of the experts and witnesses cited at his instance.

ART. 139. The declaration of poverty shall not exempt the person securing the same from the obligation of paying the costs taxed against him, if property be found on which to levy therefor.

ART. 140. A person declared poor must pay the fees, charges, and indemnities referred to in article 138:

1. Whenever it be proven by those entitled thereto that during the action the person declared poor was included in any of the cases in which the benefits of proceedings *in forma pauperis* should not be granted.

2. Whenever as a result of the cause he should receive a sum of money.

In such case, one-third of the sum received shall be destined proportionately to the payment of said sums.

3. If within three years after the conclusions of the cause his fortune should improve. It shall be understood that his fortune has improved if he should reach any of the conditions mentioned in numbers 1 and 2 of article 39 of the law of civil procedure.

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TITLE VI.—FORM IN WHICH ORDERS, RULINGS, AND DECISIONS SHALL BE MADE, AND MANNER OF ADJUSTING DISAGREEMENTS.

CHAPTER FIRST.—*Form in which orders, rulings, and decisions shall be made.*

ART. 141. The resolutions of superior and inferior courts in matters of a judicial character shall be called:

Providencias, when they are of mere practice.

Autos (rulings), when deciding incidental issues or essential points which affect in a direct manner the accused, the private complainants, or parties to the civil actions; when they decide the jurisdiction of the superior or inferior court, the sustaining or overruling of challenges, the reversal of some order, the refusal to reverse an order, imprisonment or liberation, the admission or rejection of evidence, or of the benefits of poverty, and, finally, all others which according to law must set forth the reasons therefor.

Sentencias (decisions), when they definitely decide the criminal question.

Sentencias firmes (final decisions), if there be no ordinary or extraordinary remedy against the same, except review and discharge.

Ejecutoria, the public and formal instrument in which a final decision is entered for enforcement.

The form for providencias shall be limited to the resolution of the judge or court without additions other than the date thereof, the rubric of the judge or presiding justice of the court, and the signature of the secretary.

The *autos* shall be based upon *Resultandos* and *Considerandos*, both concrete and confined to the question decided.[a]

ART. 142. Decisions shall be prepared subject to the following rules:

1. They shall begin by stating the plate at and date on which rendered; the facts which gave rise to the formation of the cause; the names and surnames of the private complainants, should there be any, and of the accused; the titles and nicknames by which they are known; their age, conjugal condition, nativity, domicile, trade or profession, and, in the absence thereof, all the other matters by which they may have figured in the cause, and also the name and surname of the justice *ponente*.

2. In numbered *Resultandos* shall be stated the facts which may be related to the questions which are to be decided, making a clear and positive statement of those considered proved.[b]

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[a] The omission of this formula can not serve as a basis for annulment on account of a breach of law. (*Decision of April 12, 1880.*)

[b] *Explanation of the resultandos by the considerandos.*—If the statement of the true facts is defective the explanation of the same made in the *considerandos* should be accepted in order not to sacrifice truth to a breach of mere form. (*Decisions of April 28, 1884, and November 17, 1886.*) But this broad interpretation does not apply to sentences imposing the penalty of death and which must be annulled for breach of form in accordance with subdivision 1 of article 912, when they do not contain in the *resultandos* the acts which constitute the crime and a specific statement of their being proved. (*Decisions of June 25, 1885, April 2, 1886, June 20 and July 5, 1888.*)

Contradiction between the facts according to the statements in the resultandos and considerandos.—This must be decided in favor of the *resultandos*. (*Decision of February 1, 1887.*)

Affirmation of the crime having been committed without stating the acts constituting it.—It is not sufficient to affirm in a decision that a crime or misde-

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3. The definite findings both of the accusation and of the defense shall be stated, as also, in a proper case, any proposal made by the court, in pursuance of the provisions of article 733.

4. Also in numbered paragraphs, which shall begin with the word *Considerando*, shall be stated:

First. The points of law and legal principles relating to the classification of the acts which are considered proved.

Second. The points of law and legal principles relating to the participation in said acts of each of the accused.

Third. The points of law and legal principles for the classification of extenuating or aggravating circumstances or exemption from criminal liability, if such be attendant.

Fourth. The points of law and legal principles for the classification of the acts which may have been considered as proved with regard to the civil liability incurred by the persons accused or the persons subject thereto heard in the cause, and those pertaining to decisions upon costs, and, in a proper case, to a declaration of a calumnious complaint.

Fifth. The citation of the legal provisions which are considered applicable, finally rendering the decision in which the accused shall be condemned or acquitted, not only as to the principal crime and those connected therewith, but also as to the incidental misdemeanors which may have been considered in the cause, such being considered those which the accused may have committed before, at the time of, or after the crime, as a means of perpetrating or concealing it.[a]

The decision shall also pass upon all questions relating to civil liability which may have been the subject of the action, and when proper the complaint shall be declared calumnious.

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meanor has been committed if it be not previously determined in what the voluntary action or omission consisted which has been the subject-matter of the action, because an appeal for annulment of judgment for a breach of law being nothing but the arguments which the parties may present in this chamber with regard to the injuries which, in their opinion, they have suffered in the decision appealed from, on account of an erroneous juridical classification of the proved facts and an incorrect application of the penal law, any contest and proper decision of the legal classification of facts omitted which should have been included in the sentence as an unalterable premise is rendered legally impossible, from which the juridical element of the former must be derived, that is to say the *considerandos* and the practical application of the law contained in the decision. (*Decision of February 18, 1889.*)

The phrase "*Hecho probado,*" with which a *resultando* closes can not be understood as referring exclusively to the last item stated in the same, nor to any of the others, but to the substantial aggregation of all which are stated in the *resultando*, and known to have reference to each other. (*Decision of April 5, 1884.*)

An annulment of judgment does not lie when there is no declaration of the acts being proved in the *resultandos*, when such statement is contained in the *cosiderandos*. (*Decision of December 7, 1887.*)

The declaration of proved acts in a sentence, according to the provisions of this paragraph, is not of all those which the parties believe should require such statement, but only of those which, in the judgment of the sentencing chamber, constitute the crime and are connected with the questions to be decided in the sentence. (*Decision of March 26, 1886.*)

[a] Incidental misdemeanors committed by the accused must be penalized in the decision which the chamber must render concluding the oral trial of which it is taking cognizance; but with regard to misdemeanors committed by a person other than the person undergoing trial, as the law provides nothing therefor, cognizance of the matter must be given to the examining judge or the municipal judge, as the case may be, for the proper purposes. (*Circular of September 4, 1884.*)

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ART. 143. The *ejecutorias* shall be headed in the name of the King.

ART. 144. An acquittal shall be understood to be without reservations in every case.

ART. 145. In order to make rulings or render decisions in matters the cognizance of which pertains to criminal audiencias or to the respective chambers of territorial audiencias, three justices shall be required, and five to pass sentence in a cause in which a penalty of death, *cadena perpetua* or *reclusión perpetua* has been requested. For this purpose, should there not be a sufficient number of justices in the chamber or section of the court, the necessary number shall be made up in the territorial audiencias with those of the other sections of the criminal chamber; and if there be none, with those of the civil chambers, respectively, appointed by the presiding judge of the criminal chamber or of the audiencia, in criminal audiencias with those of the other sections, by appointment of the presiding judge, and where the court is composed of less than five justices, with the substitute justices, and in the absence of the latter, with the justices of the nearest criminal audiencia which may in turn be designated by the presiding judge of the territorial audiencia to which both belong, of whom a request shall be made in due time by the presiding judge of the criminal audiencia where the case occurs. For orders of mere practice in any of these courts, two justices shall be sufficient, if they agree.

ART. 146. In every cause there shall be one justice *ponente.*

The associate justices of the court, excepting the presiding justice, shall take turns in this duty.

When the courts or chambers are composed of but one chief justice and two associate justices, the former shall also take his turn as *ponente* every fifth time.

ART. 147. It shall be the duty of the *ponente:*

1. To advise the court of the petitions of the parties.

2. To examine everything relative to the evidence offered and advise the court whether it is pertinent or not.

3. To take the depositions of the witnesses and any other evidence when, according to law, the same can not or should not be taken before the court ordering the same, or if taken without the town where the court is sitting, and when judges of examination or municipal judges are not commissioned to take them.

4. To propose the rulings and decisions, which are to be submitted for discussion by the court, and to finally draft them in the terms agreed upon.

If the *ponente* does not agree with the vote of the majority, another justice shall be charged with the preparation of the decision; but in such case the *ponente* must prepare a dissenting opinion.

5. To read the decision in open court.

ART. 148. If for any reason it is impossible to decide a case on the proper day, this fact shall not be an obstacle to other cases being decided which may have been heard subsequently, without, however, altering the order more than is absolutely necessary.

ART. 149. Immediately after the conclusion of the oral trial or on the following day before the hour for public business, the court shall discuss and vote upon all questions of fact and law, which may have

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been the subject-matter of the trial. The decision approved shall be prepared and signed within the period fixed in article 203.

ART. 150. The discussion and voting for decisions shall be held in all courts behind closed doors, before or after the hours designated for the ordinary dispatch of business.

ART. 151. After the decision proposed by the *ponente* has been discussed, he shall vote first, and afterwards the other justices in the inverse order of their seniority.

ART. 152. When the importance of the decision so requires, the presiding justice shall make a brief résumé of the same before the vote is taken.

ART. 153. The orders, rulings, and decisions shall be made by an absolute majority of votes, except in such cases in which the law expressly requires a greater number.

ART. 154. If after the hearing and before the vote is taken, some justice shall become disabled and not be able to attend the voting, he shall give his signed vote with the reasons therefor, and shall forward it directly to the presiding justice. Should he be unable either to write or sign, he shall employ the clerk.

The vote thus cast shall be preserved in the book of decisions by the presiding justice and rubricated by him.

If a justice should be unable to vote even in this manner, the voting in the cause shall be done by those who are not disabled and who may have attended the hearing, and should there be sufficient number to form a majority, they shall render the decision.

If there be no majority the provisions of the law with regard to disagreements shall be observed.

ART. 155. When any justice shall be transferred, retired, removed, or suspended, he shall vote upon the causes the hearing of which he may have attended and which have not as yet been decided.

ART. 156. After the voting for a decision has commenced it can not be interrupted except by some insuperable cause.

Everyone who takes part in the voting upon an order, ruling, or decision shall subscribe to what has been agreed to, even though he may have dissented from the majority; but in this case he may reserve his vote, which shall be inserted, with his signature at the foot thereof, in the book of reserved votes within the next twenty-four hours.

ART. 157. The certificates or transcripts of decisions issued by the courts shall not contain the reserved votes; but they shall be transmitted to the supreme court, and shall be made public when an appeal for annulment of judgment is interposed and allowed.

ART. 158. Decisions shall be signed by all justices not disabled.

ART. 159. In every criminal court, chamber, or section shall be kept a register of decisions, in which shall be entered and signed all final decisions.

The said register shall be under the custody of the respective presiding justices.

ART. 160. Final decision shall be read and served upon the parties and upon their solicitors in all oral trials the same day on which they are signed or not later than the following day.

If for any reason or by any accident the parties can not be found when sought for service this fact shall be made a matter of record,

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and in such case the notice served upon their solicitors shall be sufficient.

Decisions upon incidental issues shall be served upon the solicitors only.

ART. 161. Courts can not amend their decisions after the same have been signed, but on the first legal day after the notice is served they may elucidate some obscure point, supply any omission, or correct any important mistake therein.

These elucidations may be made *ex officio* or at the instance of the parties or of the public prosecutors.

ART. 162. The courts shall preserve in methodical collections the drafts of rulings upon incidental issues and of decisions rendered, making reference in each one in the proper entry to the book of rulings and decisions of the court.

The leaves of the book of rulings and decisions of courts shall be numbered and sealed and rubricated by the respective presiding justice.

CHAPTER II.—*Manner of adjusting disagreements.*

ART. 163. If in voting upon a final decision, ruling, or order of mere practice there should not be a majority of votes upon any findings of fact or conclusions of law, or upon the decision to be rendered, the discussion and voting upon the points not agreed upon shall be repeated.

ART. 164. If at the second voting those who disagree insist upon their opinion, only the two votes most favorable to the accused shall be subjected to another discussion, and one of these must be selected by all the voters so that one or the other be approved.

In such case there shall be inserted in the decision at the proper place the following words: *In view of the result of the voting, the law decides:* . . . . . .[a]

The determination of what are the two opinions most favorable to the accused shall be made by a majority of votes.

The provisions of this and of the foregoing articles do not apply to the case referred to in the second paragraph of article 153.

ART. 165. In decisions rendered by the Supreme Court upon appeals for annulment of judgment or upon those for review there shall be no disagreement, the *resultandos* and *considerandos* which do not receive an absolute majority of votes being therefore rejected.

TITLE VII.—NOTIFICATIONS, CITATIONS, AND SUMMONSES.

ART. 166. Notifications, citations, and summonses which are served beyond the limits of the court room or chamber, shall be respectively served by a bailiff or an officer of the chamber.

Those within the court room shall be served by reading the entire order to the person in interest, giving him at the same time a copy thereof, even though he should not request it, and making an entry

[a] If a chamber be constituted of three justices, and one should vote for the acquittal of the prisoner for lack of proof, another for his conviction as an author of a frustrated crime, and the other for his conviction also as the author of a consummated crime, if the latter should choose the first of these votes and the disagreement disappears, the decision of acquittal can not be appealed from for annulment upon the claim of its not considering acts proved which are such. (*Decision of May 2, 1885.*)

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of both acts upon the record, which shall be subscribed, respectively, by the secretary or officer of the chamber.[a]

ART. 167. For the service of notices the secretary acting in the cause shall prepare a writ which shall contain:

1. A statement of the object of said cause and the names and surnames of the parties thereto.
2. A copy of the resolution which is to be served.
3. The name and surname of the person or persons upon whom notice is to be served.
4. The date on which the writ is issued.
5. The signature of the clerk.

ART. 168. A brief note shall be made upon the record of the issue of the writ and the officer of chambers or bailiff charged with the service thereof.

ART. 169. The person receiving the writ shall make and authenticate with his signature as many copies thereof as there are persons to be notified.

ART. 170. Service shall consist of the reading of the entire order to be served, delivering the copy of the writ to the person notified, and making a brief entry of service at the foot of the original writ.

ART. 171. The entry shall state the day and hour of service, and shall be signed by the person receiving the writ and by the official who executed the service.

If the person receiving the writ does not know how to sign, another shall do so at his request; and if he does not wish to do so, two witnesses secured for the purpose shall sign. These witnesses can not refuse to sign under a fine of not less than 12.50 nor more than 62.50 pesetas.

ART. 172. If the person to be notified should not be found at his dwelling on the first effort to do so, whatever be the cause or time of his absence, the writ shall be delivered to a relative, a member of his household, or a servant over 14 years of age who may be found at said dwelling.

Should there be no one at the dwelling, the writ shall be delivered to one of the nearest neighbors.

ART. 173. In the entry of service shall be stated the obligation of the person who receives a copy of the writ to deliver the same to the person to be notified upon his return to his dwelling, under a fine of not less than 12.50 or more than 125 pesetas should he fail to deliver it.

ART. 174. If it be impossible to serve a notice, owing to a change of residence of the person to be notified, and it be impossible to discover his new residence, or for any other reason, it shall be stated in the original writ.

ART. 175. Service of citations and summonses shall be made in the manner prescribed for notifications, with the following differences:

The writ of citation shall contain:

1. The name of the judge or court issuing the order, the date of the latter, and the matter on which it is based.
2. The names and surnames of the parties to be cited, the address of their dwellings; and, should they be unknown, any other data by which their whereabouts may be ascertained.

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[a] Articles 207 and 209 fix a period in which these proceedings must be had, and articles 501 and 517 relate to the notice of warrants of imprisonment and release.

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3. The purpose of the citation.

4. The place where and the day and hour when the person cited is to appear.

5. The obligation, should there be any, of appearing upon the first call under a fine of not less than 12.50 or more than 125 pesetas; or, if it be the second call, the obligation of attending with the admonition of being proceeded against as guilty of the crime of refusing aid, as provided for in the penal code with regard to jurors, experts, and witnesses.

The writ of summons shall contain requisites 1, 2, and 3 above mentioned for writs of citation, and also the following:

1. The period within which the person summoned must appear.

2. The place where he must appear and the judge or court before whom he must do so.

3. The warning that, should he fail to appear, he shall suffer the prejudices which may be proper according to law.

ART. 176. If the person cited shall not appear at the place, day, and hour set, the person who served the citation shall return to the dwelling of the person who received the copy of the writ, entering upon the original writ the cause of the failure to appear. If this cause be not legitimate, the judge or court issuing the citation shall immediately enforce the penalty which may be proper of those established in number 5 of the foregoing article.

ART. 177. When the notifications, citations, or summonses are to be served within the jurisdiction of another Spanish judicial authority, letters rogatory, letters requisitorial, or mandates shall be issued, as the case may be, inserting therein the requisites which a writ should contain.

If they are to be served abroad, the procedings prscribed therefor by treaty, if any, shall be observed, and otherwise the principles of reciprocity.

ART. 178. If the person to be notified, cited, or summoned should have no known domicile, the proper orders shall be issued to the agents of the judicial police by the judge or court ordering the proceeding, that search be made for him within a brief period which he may set for the purpose.

If he be not found, the writ shall be ordered inserted in the official newspaper of the province of his last residence and in the *Gaceta* of the capital, if considered necessary.[a]

ART. 179. After the notification, citation, or summons has been served, or a statement of the causes preventing such service has been made, the original writ or the letters requisitorial, letters rogatory or mandate, shall be attached to the record.

ART. 180. Notifications, citations, or summonses not served according to the provisions of this chapter shall be null.

Nevertheless, if the person notified, cited, or summoned should acknowledge service at the trial, the proceeding shall produce all its effects from that time as though service had been made according to law; but this shall not exempt the assistant or subordinate official from the disciplinary correction prescribed in the following article.

ART. 181. The assistant or subordinate official who shall be tardy in the discharge of the duties imposed upon him by this chapter, or who shall fail to comply with any of the formalities herein prescribed,

[a] See G. O. No. 186, headquarters Department Porto Rico, Nov. 24, 1899.

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shall be disciplinarily corrected by the judge or court to which he belongs by the imposition of a fine of not less than 62.50 or more than 250 pesetas.

ART. 182. Notifications, citations, and summonses may be served on the solicitors of the parties.

The following are excepted:

1. Citations which by express provision of law must be served in person on the interested parties.

2. Citations, the purpose of which is to secure the obligatory appearance of the said parties.

TITLE VIII.—LETTERS REQUISITORIAL, MANDATES, AND LETTERS ROGATORY.[a]

ART. 183. Judges and courts shall mutually aid each other in the execution of all proceedings necessary for the hearing and decision of criminal causes.

ART. 184. When a judicial order is to be executed by a judge or court other than the one issuing the order, the latter shall commit the execution thereof by means of letters requisitorial, letters rogatory, or mandates.

Letters requisitorial shall be used when he applies to a judge or court higher in degree; letters rogatory when said execution is directed to one of equal degree, and letters mandatory or mandates when directed to a subordinate court or judge.

ART. 185. The judge or court which shall have ordered the execution of a judicial proceeding can not address judges or courts of a category or degree lower, who are not his subordinates, but he must deal directly with such of their superiors as exercise a degree of jurisdiction equal to his own.

Cases for which the law expressly provides otherwise are excepted.

ART. 186. A mandate shall be employed for the purpose of ordering the issue of certificates or transcripts or the fulfillment of any judicial proceeding, the execution of which is imposed upon registrars of property, notaries, assistants, or subordinate officials of inferior or superior courts, and members of the judicial police who are under the orders of the same.

ART. 187. When judges or courts are obliged to direct requests to authorities or officials of another department, they shall do so by official communications or statements, as the case may require.

ART. 188. Letters requisitorial, letters rogatory, or mandates in causes involving crimes which are not of those which can be prosecuted only on a private complaint, shall be issued *ex officio*, and shall be transmitted directly for execution by the judge or court issuing them.

Those issuing in causes for crimes which can be prosecuted only on a private complaint may be delivered to the interested party upon the giving of a receipt therefor, or to his representative, at whose instance they were issued, a period being fixed for presenting them to the person who is to execute the same.

Cases for whch the law specially provides otherwise are excepted.

ART. 189. The person receiving the documents shall present them, within the time set, to the judge or court to whom their execution

[a] See G. O. No. 173, headquarters Department Porto Rico, Oct. 28, 1899.

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may have been intrusted, giving notice at once of their delivery to the court or judge issuing the same.

Upon their presentation, the proper official shall at once make a memorandum at the foot of the letters requisitorial, letters rogatory, or letters mandatory, of the date of delivery and the person presenting the same, to whom a receipt shall be given, both signing the entry. Said official shall furthermore make a report to the judge or court the same day, and if this be impossible, on the day following.

ART. 190. If they shall have been transmitted *ex officio*, the judge or court receiving them shall immediately acknowledge the receipt thereof.

ART. 191. The judge or court who shall receive, or to whom are presented letters requisitorial, letters rogatory, or letters mandatory, without prejudice to demanding jurisdiction which he may consider as pertaining to him, shall order what may be proper for the execution of the request made therein within the period fixed in the letters themselves, or otherwise, as soon as possible.

After the commission has been fulfilled, the letters shall be returned without delay through the same channels by which they were received or presented.

ART. 192. If the execution of letters requisitorial be delayed longer than is absolutely necessary therefor, taking into account the distance and the character of the proceedings to be had, the judge or court issuing the same shall transmit *ex officio*, or at the instance of a party, as the case may be, a reminder to the judge or court upon whom the request was made.

If the delay in the fulfillment should relate to letters rogatory, instead of a reminder, letters requisitorial shall be directed to the immediate superior of the judge upon whom the request was made, advising him of the delay, and the superior shall punish the negligent official with a disciplinary correction, without prejudice to the greater liability he may incur.

The official issuing letters mandatory shall also avail himself of similar compulsion to oblige a tardy subordinate to return the same duly executed.

ART. 193. Letters rogatory directed to foreign courts shall be sent through diplomatic channels in the manner prescribed by treaty, and in the absence thereof, as prescribed by the general regulations of the government.

In all other cases principles of reciprocity shall govern.

ART. 194. The rules prescribed in the foregoing article shall be observed in executing in Spain letters rogatory from foreign courts, requiring the performance of some judicial proceeding.

ART. 195. Judges and courts shall communicate with authorities, officials, agents, and commanders of armed forces who are not under their immediate orders by polite notes, unless the urgency of the case shall require that it be done orally, this being made a matter of record in the cause.

ART. 196. Judges and courts shall address the colegislative bodies and the ministers of the Crown by means of statements forwarded through the colonial department, both in order to secure their aid in the administration of justice within the limits of their proper powers, as well as to compel the authorities which are their subordinates to furnish the data or render the services requested of them.

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TITLE IX.—JUDICIAL PERIODS.

ART. 197. Judicial decisions and proceedings shall be rendered and held within the periods fixed for each.

ART. 198. If no period be fixed it shall be understood that they must be rendered or held without delay.

Any violation of the provisions of this and the foregoing articles shall be disciplinarily corrected, according to the gravity of the case, without prejudice to the right of the party injured to demand any proper indemnity for damages or other liabilities.

ART. 199. Judges and courts shall, in a proper case, impose said disciplinary correction upon their assistants and subalterns, without the necessity of said correction being requested by a party, and should they not do so they shall in their turn incur liability.

ART. 200. Persons who consider themselves prejudiced by unjustifiable extensions of judicial periods may forward a complaint to the Colonial Department, which, if it considers the same to be well founded, shall transmit it to the proper prosecuting official, in order that he may bring proceedings *ex officio* to enforce the liability which may be proper according to law, or request the imposition of the proper disciplinary correction.

ART. 201. Days upon which superior and inferior courts are not sitting according to law, shall nevertheless be legal for the proceedings of the sumario.[a]

ART. 202. Judicial periods can not be extended when the law does not expressly provide otherwise.

They may, however, be suspended or opened anew, if it be possible without retrogressing in the trial from the state in which it may be, if there be a just and proved cause therefor.

A just cause shall be considered one which makes it impossible to render a decision or perform a judicial proceeding independently of the will of those who should have done so.

ART. 203. Decisions shall be rendered and signed within the three days following that on which the hearing of the incidental issue was held, or that on which the action closed.

Decisions in trials for misdemeanors are excepted, which shall be rendered on the same or the following day.

ART. 204. Rulings or decrees shall be issued and signed on the day following that on which the petitions involved were made, or when the proceedings have reached a stage where they may be issued.

Orders of mere practice shall be made and signed immediately when the necessity therefor appears in the proceedings, or on the same or the day following that on which the petitions therein were presented.[b]

ART. 205. Rulings and orders are excepted from the provisions of the foregoing article which should be issued in a shorter period in order not to interrupt the course of the public trial, or not violate some legal provision by the delay.

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[a] For the purposes of the provisions of this article the provisions of articles 622 to 633 are considered proceedings of the sumario. (*Address of the fiscal of the supreme court of September 15, 1883, No. 13.*)

See Official Gazette, Porto Rico, No. 85, Apr. 11, 1899.

[b] Orders, rulings, final decisions, and *ejecutorias* are defined by articles 141 and 142 of this law, as well as the formalities of their respective formulas.

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ART. 206. The clerk shall communicate to the judge or court all written petitions on the day they are filed, if this be done before or during the hours for public hearings, and on the following day, if filed after such time.

In any case he shall place at the foot of the petition, upon receiving it, and in the presence of the person delivering the same, a brief note of the day and hour of the delivery and shall furnish to the interested party a receipt therefor upon his request.

ART. 207. Notifications, citations, and summonses which are to be served in the place where the court is sitting, shall be served not later than the day after the decision has been rendered which is to be notified, or by virtue of which a citation or summons is to be made.

ART. 208. If said service is to be made beyond the judicial seat, the clerk shall deliver the writ to the officer of the chamber or to a subaltern, or shall transmit it *ex officio* or deliver to the party, as may be proper, the letters requisitorial, letters rogatory or mandate on the day following that on which the decision was rendered.

ART. 209. The processes referred to in the foregoing article shall be served within a period not to exceed one day for every 20 kilometers between the seat of the court and the point where they are to be executed.

ART. 210. Other judicial proceedings shall be had within the periods fixed therefor at the time the decree ordering the same is issued.

ART. 211. Petitions to amend, or appeals for modification or revocation, shall be interposed within a period of three days following that on which the last notice was served upon the parties to the action.

ART. 212. An appeal shall be filed within five days following that on which the last notice of the judicial decision which is the object thereof was served upon the persons mentioned in the foregoing article.

An appeal for annulment of judgment for breach of form shall be interposed within a like period, counted from the day following that of the last notice served upon the persons mentioned in the foregoing article of the decision which closed the action.

The preparation of an appeal for annulment of judgment for a violation of law shall also be made within the five days following that on which the last notice of the decision or ruling from which it is proposed to appeal.

Appeals and the preparation of an appeal for annulment of judgment for violation of law from decisions rendered in an action on a misdemeanor are excepted. For these remedies the period shall be the day following that on which the last notice was served.

ART. 213. The remedy of complaint for the interposition of which the law does not fix any period may be interposed at any time during the pendency of the cause.

ART. 214. The clerks of courts shall be obliged to inform the judge or court of the expiration of judicial periods, without the slightest delay and under their liability, making an entry upon the record of this fact.

ART. 215. Upon the expiration of the period fixed by law or by the judge or court, as the case may be, the course of the proceedings shall be continued *ex officio* from where left off.

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If the record should be in the possession of some person, it shall be recovered without the necessity of an order, under the liability of the clerk, with the imposition of a fine of not less than 12.50 and not more than 125 pesetas upon the person retaining the same should he not deliver it at once, or should he do so without making his report or answer, if required to do so. In the latter case a second reasonable period shall be allowed him by the judge or court, and if not even upon the expiration thereof the person referred to in this article should return the process duly executed, he shall be tried as guilty of disobedience.

Any person, who not even after having a fine imposed upon him, should fail to return the record shall also be likewise tried.[a]

TITLE X.—REMEDIES AGAINST DECISIONS OF COURTS AND JUDGES OF EXAMINATION.

ART. 216. Petitions for amendment, appeals, and complaints lie from decisions of judges of examination.

ART. 217. Petitions for amendment lie from all rulings of a judge of examination. An appeal may be interposed only in the cases determined by law, and shall be allowed both for review and a stay of proceedings only when the law expressly so provides.

ART. 218. A complaint lies from all rulings of a judge which can not be appealed from and from decisions disallowing an appeal.

ART. 219. Petitions for amendment and appeals shall be interposed before the same judge who made the ruling.

A complaint shall be interposed before the competent superior court.

ART. 220. The judge competent to take cognizance of a petition for amendment shall be the one before whom it is interposed, in accordance with the foregoing article.

The court competent to take cognizance of the cause in the oral action shall have jurisdiction of the appeal.

The latter shall also be competent to take cognizance of an appeal from a decree rejecting a complaint.

The judge or court before whom a complaint shall have been interposed, in accordance with the second paragraph of article 212, shall be competent to take cognizance thereof.

ART. 221. Petitions for amendment, appeals, and complaints shall always be interposed in writing and authenticated by the signature of an attorney.

ART. 222. An appeal can not be interposed until a petition for amendment has been filed; but both may be interposed in the same instrument, in which case the appeal shall be proposed subsidiarily in case of the rejection of the petition for amendment.

A person presenting a petition for amendment shall submit therewith as many copies of the same as there are other parties, to whom said copies must be delivered.

The judge shall decide the appeal on or before the second day after the delivery of the copies, whether or not the other parties have filed petitions.

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[a] Article 376 of the Penal Code punishes this crime with the penalties of temporary special disqualification in its maximum degree to perpetual special disqualification and a fine of not less than 375 and not more than 3,750 pesetas.

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ART. 223. If an appeal be interposed, the judge shall admit it for a review of the proceedings only, or both for review and stay of the proceedings, as may be proper.

ART. 224. If the appeal be admitted both for review and stay of proceedings, the original record shall be ordered transmitted to the audiencia, if the latter is to take cognizance of the appeal, and the parties shall be summoned for appearance before the same within a period of ten days.

If the Supreme Court is to take cognizance of the appeal, the summons shall be for appearance within a period of sixty days, and a certified transcript of such parts of the cause as may be sufficient for a decision upon the appeal shall be transmitted.

ART. 225. If the appeal be admissible for a review of the proceedings only, a certified copy of the decision appealed from shall be ordered made, as well as of the other matters which the appellant may request and which can be given him, taking into consideration, in a proper case, the secret character of the *sumario*, and such other matters as the judge may order *ex officio*.

This transcript shall be issued by the clerk within the shortest period possible, which shall be fixed in the order requiring the issue thereof.

ART. 226. Proceedings which, in so far as the appellant is concerned, are of a secret character, can not be shown him for the purpose of indicating the matters to be transcribed.

ART. 227. After the transcript has been made, the parties shall be summoned to enter an appearance before the court which is to take cognizance of the appeal within the period fixed in article 224.

ART. 228. After the appellate court has received the record, if within the period fixed in the summons the appellant shall not have entered an appearance, the appeal shall be declared abandoned *ex officio*, this fact being communicated in writing at once to the judge, the original record being returned to him, if the appeal shall have been admitted both for a stay and a review of the proceedings.

ART. 229. If the appellant shall have entered an appearance, the record shall be referred to him for examination for a period of three days.

Thereupon it shall be referred for a similar period to the other parties who have entered an appearance and finally to the prosecuting official, if the cause should involve a crime which gives rise to proceedings *ex officio* or a crime which may be prosecuted upon a denunciation by the parties interested.

Notwithstanding the provisions of the preceding paragraphs, such matters as are of a secret character for the parties shall not be referred to them.

ART. 230. After the record has been returned by the prosecuting official, or if the latter be not a party to the cause, by the last person to whom it was delivered, a day shall be set for the hearing, at which the prosecuting official, if a party, and the counsel of the other parties may make such statements as they may deem pertinent.

ART. 231. The parties may present before the day for the hearing, the documents which they may deem advisable in support of their contentions.

No other means of proof shall be admissible

ART. 232. After the decision rendered becomes final, it shall be communicated to the judge for execution, the process being returned

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to him if the appeal shall have been both for a review and a stay of proceedings.

ART. 233. If a complaint be made, the court shall order the judge to render a report within the brief period fixed for the purpose.

ART. 234. Upon the receipt of such report, it shall be referred to the prosecuting official, if the cause involves a crime in which he must take part, for a written opinion thereon within a period of three days.

ART. 235. In view of this opinion, if there be any, and the report of the judge, the court shall decide what it may deem just.

The decision rendered can not affect the status of the cause if the remedy shall have been interposed outside of the ordinary period for appeals, without prejudice to what the court may decide at the proper time when it takes cognizance of the former.

ART. 236. An appeal for a revocation or reversal of judgment may be interposed against decisions of criminal courts before the one rendering the same.

ART. 237. Such decisions are excepted, with regard to which the law expressly grants another remedy.

ART. 238. An appeal for revocation or reversal of judgment from a decision of any court shall be heard and determined according to the procedure prescribed for petitions for amendment against any decision of a judge of examination.

TITLE XI.—COSTS IN ACTIONS.[a]

ART. 239. A ruling or decision which terminates a cause or any of the issues therein must contain a decision as to the payment of costs in the proceedings.[b]

ART. 240. This resolution may consist of:

1. A declaration of costs *ex officio*.

2. The imposition of their payment upon the accused, fixing the proportion which each of them is to pay, if there be several.

Costs shall never be taxed against accused persons who are acquitted.

3. The adjudgment of the same against the private complainant or civil plaintiff.

The latter shall be adjudged to pay the costs when it shall appear from the proceedings that they have acted maliciously or in bad faith.[c]

ART. 241. The costs shall consist of:

1. The cost of the stamped paper used in the cause.

2. The payment of the court fees according to schedules.

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[a] This title confines itself to establishing general rules for the taxation of costs and the manner of recovering the same; but the special titles relating to questions of jurisdiction, challenges, proceedings *in forma pauperis*, preliminary action necessary to enforce the criminal liability of judges and justices, etc., determine who are to pay the same in each respective case. Decrees upon costs can not be annulled.—(*Decisions of January 10, 1890, and January 18, 1887.*)

[b] The precept of this article has been confirmed by various decisions of the Supreme Court, notably by that of February 12, 1879.

[c] *Taxation against the denouncer.*—Should the denouncer not appear as the private complainant or civil plaintiff, as the law relieves him of the obligation of proving the acts denounced, and as he contracts no other liability but that pertaining to the crimes he may have committed by means of the denunciation or on the occasion thereof, costs can not be taxed against him. (*Second Chamber, decision of February 12, 1879.*)

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3. The payment of the fees of attorneys and experts.

4. The payment of the indemnities pertaining to the witnesses who may have demanded them, and the other expenses which may have arisen in connection with the hearing of the cause.

ART. 242. When the costs are declared to be *ex officio*, the amounts referred to in numbers 1 and 2 of the foregoing articles will not be paid.

The solicitors and attorneys who may have represented and defended any of the parties, and the experts and witnesses who shall have testified at their request, may require said party, if the proceedings are not *in forma pauperis*, to pay the fees, charges, and indemnities due them, submitting their claim through the judge or court taking cognizance of the cause.

Compulsory process shall be employed for their recovery if, upon the presentation of the respective claims and their presentation to the parties they should not pay the same within a reasonable time fixed by the judge or court, or charge that they are illegal or excessive. In the latter case, the provisions of the second paragraph of article 244 shall first be observed.

The clerk of the court or tribunal intervening in the execution of the sentence shall make the taxation of costs referred to in numbers 1 and 2 of the foregoing article. The fees of the attorneys and experts shall be vouched for by memoranda signed by the persons charging the same. The indemnities of the witnesses shall be computed according to the amount duly fixed in the cause. The other costs shall be fixed by the superior or inferior court, in view of the vouchers.

ART. 243. After the taxation and appraisement of the costs, the prosecuting official and the party against whom the costs were adjudged shall be heard in order that they may state what they deem proper.

ART. 244. In view of the statements of the prosecuting official and the said party, the judge or court shall approve or modify the taxation.

If any item of the fees should be objected to as illegal or excessive, the judge or court before deciding may call for the opinion of two persons of the same profession as the one presenting the item objected to as illegal or excessive, or the opinion of the board of administration of the college, if the persons engaged in such profession should belong to an association located at the seat of the judge or court.

ART. 245. After the taxation or appraisement has been approved or amended, compulsory process, established by the Law of Civil Procedure, shall be instituted for the purpose of enforcing the payment thereof upon the property of those sentenced thereto.[a]

ART. 246. If the person sentenced should not possess sufficient property to meet all pecuniary liabilities, the provisions of the respective articles of the Penal Code shall be observed for the order and preference of payment.[b]

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[a] Articles 1479 et seq. of the Law of Civil Procedure in force in Cuba and Porto Rico relate to compulsory process.

[b] The articles of the Penal Code which determine the order of preference are articles 48 to 51. (See Appendix II.)

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TITLE XII.—OBLIGATIONS OF JUDGES AND COURTS WITH REGARD TO JUDICIAL STATISTICS.

ART. 247. Municipal judges shall be obliged to transmit every month to the presiding justice of the respective territorial audiencia a statement of the actions for misdemeanors which may have been heard during the month.

ART. 248. Judges of examination shall forward monthly to the presiding justice of the respective criminal chamber or audiencia a statement of the *sumarios* begun, pending, or concluded during the previous month.

ART. 249. The presiding judges of the said chambers or audiencias shall transmit every quarter to the presiding judge of the territorial audiencia a brief report of the statements received monthly from the judges of examination, and another statement of the causes pending and concluded before their court during the quarter.

The quarters shall be formed counting from the beginning of the judicial year.

ART. 250. The presiding judges of the territorial audiencias shall transmit to the Colonial department, during the first month of each quarter, brief reports of the statements received from the municipal judges and the criminal courts.

ART. 251. The second and third chambers of the Supreme Court shall forward to the Colonial department a statement of the appeals for annulment of judgment pending before the same and decided by them during the quarter.

When the criminal chamber of any territorial audiencia or the third chamber of the supreme court, or the latter sitting *in banc*, shall begin or decide some criminal cause especially entrusted to them, they shall immediately inform the colonial minister, transmitting a transcript of the sentence in a proper case.

ART. 252. The courts shall transmit directly to the "Registro central de los procesados y penados," established in the colonial department, authenticated memoranda of the final sentences imposing some penalty for a crime, and of the decrees declaring the persons accused in default, in accordance with the forms sent them for the purpose.

ART. 253. A court rendering a final decision sentencing a person accused in any criminal cause shall transmit a certified copy of the adjudging portion of said sentence to the judge of examination of the place where the *sumario* was conducted.

ART. 254. Every judge of examination shall keep a book which shall be called "Register of convictions."

The leaves of this book shall be numbered, sealed, and rubricated by the judge of examination and his secretary of administration.

Briefs of the certified copies mentioned in the foregoing article shall be entered in this book.

ART. 255. Every judge of examination shall also keep another book entitled "Register of persons accused in default," with the formalities prescribed for that of convictions.

In the latter book shall be entered all causes in which the persons accused have been declared in default, and the proper entry shall be made upon the record of each cause when the person in default is found.

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ART. 256. Criminal audiencias or chambers shall keep a book similar to that mentioned in the foregoing article in which to record persons accused who are declared in default after the conclusion of the *sumario*.

ART. 257. Without prejudice to the provisions of this title, the colonial minister shall establish, by means of the proper regulations, the service of criminal statistics to be organized in said department and the rules to be observed in connection therewith by judges and courts.

TITLE XIII.—DISCIPLINARY CORRECTIONS.

ART. 258. Without prejudice to the special corrections which this law establishes for specific cases, the provisions of Title XIII of the first book of the law of civil procedure are also applicable to any persons, whether officials or not, who are present at or intervene in any manner whatsoever in criminal proceedings, the proper disciplinary corrections being imposed by municipal judges, judges of examination, criminal courts, or the Supreme Court.[a]

Book Second.—THE SUMARIO.

TITLE FIRST.—THE DENUNCIATION.

ART. 259. He who shall be present at the commission of any public crime shall be obliged to inform immediately the nearest judge of examination, municipal judge, or official, under a penalty of not less than 12.50 or more than 125 pesetas.

ART. 260. The obligation established in the foregoing article does not include infants nor those who are not in the full enjoyment of their reason.

ART. 261. Nor shall the following be obliged to make a denunciation:

1. The spouse of the delinquent.
2. The ascendants and descendants by consanguinity or affinity of the delinquent and his collateral relatives by consanguinity or uterine, and by affinity up to and including the second degree.
3. The natural children with regard to the mother in every case, and with regard to the father when acknowledged, as well as the mother and father in similar cases.

ART. 262. Those who, by reason of their position, profession, or trade, should have information of some public crime, shall be obliged immediately to denounce the same to the public prosecutor, the court of competent jurisdiction, the judge of examination, and, in his absence, the municipal judge or the police officer nearest to the place, if a flagrant crime be involved.

Those who shall fail to comply with this obligation shall incur the fine prescribed in article 259, which shall be imposed as a matter of discipline.

If the failure to give such information should be incurred by a professor of medicine, surgery, or pharmacy, and the crime of those

[a] The title cited of the law of civil procedure authorizes judges and courts to disciplinarily correct private individuals present at judicial proceedings, as well as officials taking part therein, for offenses committed by either.

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included in that title of the Penal Code which treats of crimes against the person, or on account of a fictitious birth, or the death of an abandoned infant, the fine shall not be less than 62.50 pesetas.

If the person failing to give the information be a public employee, his immediate superior shall also be informed for the proper administrative purposes.

The provisions of this article are understood to apply when the omission does not produce any liability in accordance with law.

ART. 263. The obligation imposed by the first paragraph of the foregoing article does not include attorneys or solicitors with regard to the instructions or explanations they may receive from their clients. Neither shall it include ecclesiastics or ministers of dissenting cults with regard to information revealed to them in the exercise of the duties of their ministry.

ART. 264. He who, by any means different from those mentioned, should have information of the commission of any crime of those which are prosecuted at the instance of the Government, must denounce it to the public prosecutor, the court of competent jurisdiction, or to the municipal or examining judge, or police official, without being considered bound thereby to prove the acts denounced or to make a formal complaint.

The denouncer shall in no case incur any other liability than that pertaining to the offenses he may have committed by means of the denunciation or on the occasion thereof.

ART. 265. The denunciation may be made in writing or orally, in person or through an agent with a special power therefor.

ART. 266. A written denunciation must be signed by the denouncer; and if he be unable to do so, by some other person at his request. The authority or official receiving the same shall rubricate and stamp every sheet thereof in the presence of the person presenting it, who may also rubricate it in person or through another person at his request.

ART. 267. If the denunciation be verbal, a memorandum shall be made by the authority or official receiving the same, in which, in the form of a declaration, shall be stated all the information which the denouncer may have as to the act denounced and its circumstances, both subscribing the same. If the denouncer be not able to sign, another person shall do so at his request.

ART. 268. The judge, court, authority, or official who shall receive a written or verbal denunciation shall require proof of the identity of the person of the denouncer by his personal *cedula* or by other means which they may consider sufficient.

If the denouncer so require, they shall give him an acknowledgment of his having formally made the denunciation.

ART. 269. After the denunciation has been formally made, the judge or official to whom it is made shall immediately proceed to verify the act complained of or order that this be done unless said act be not a crime or the denunciation be manifestly false. In either case the court or official shall abstain from taking any proceedings, without prejudice to the liability they may incur if they improperly ignore said denunciation.[a]

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[a] See Official Gazette, Porto Rico, No. 37, Feb. 12, 1899.

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TITLE II.—THE COMPLAINT OR INFORMATION.

ART. 270. Any Spanish citizen, whether injured or not by the crime, may make a complaint, exercising the popular right of action established by article 101 of this law.

Foreigners may also make complaints for crimes committed against their persons or property, or the persons or property of their principals, after complying with the provisions of article 280, if they be not included in the provisions of the last paragraph of article 281.

ART. 271. Public prosecutors shall also exercise, in the form of informations, penal actions in cases in which they should be obliged to do so in accordance with the provisions of article 105.

ART. 272. The complaint shall be made before the judge of examination of competent jurisdiction.

If the person charged in the complaint be subject by a special provision of the law to a specific tribunal, the complaint shall be made before the latter.

The same shall be done if there be several persons charged with the same crime, or with two or more connected crimes, and one of them be subject exclusively to one tribunal, and said tribunal be not that called upon to take cognizance of the crime as a general rule.

ART. 273. In the cases of the foregoing article, if a flagrant crime be involved or some crime which does not leave any permanent marks of its commission, or in which there is good reason to fear the concealment or flight of the presumed criminal, the private individual desiring to file a complaint charging the crime may at once apply to the nearest judge of examination or municipal judge, or to any police official, for the purpose of having the first steps taken which may be necessary to ascertain the truth of the facts and for the detention of the delinquent.

ART. 274. The private complainant, whatever jurisdiction he be subject to, shall be subject for all the purposes of the action instituted by him to the judge of examination or court having jurisdiction of the crime which is the subject-matter of the complaint.

But he may abandon the complaint at any time, but shall nevertheless be subject to the liabilities which he might have incurred by reason of his previous acts.

ART. 275. If the complaint should charge a crime which can be prosecuted only at the instance of a party, it shall be understood that said complaint is abandoned by the person who made it, should he not institute proceedings within ten days next following the notice of the decree of the judge or court to that effect.

For this purpose, after ten days have elapsed since the taking of the final steps requested by the complainant, or when the cause is at a standstill on account of his inaction, the judge or court taking cognizance of the proceedings shall order *ex officio* that the former demand what may be proper according to law within the period fixed in the foregoing paragraph.

ART. 276. The complaint shall also be considered as abandoned if, on account of the death or incapacity of the complainant to continue the action, none of his heirs or legal representatives should appear to prosecute the same within thirty days next after their citation for this purpose, giving them notice of the complaint.

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ART. 277. The complaint shall always be submitted through a solicitor having a sufficient power subscribed by an attorney.

It shall be drafted on official paper, and shall state:

1. The judge or court before whom it is made.
2. The name, surname, and residence of the complainant.
3. The name, surname, and residence of the person charged.

If these details be unknown, the description of the person charged must state such distinctive marks as may best tend to his identification.

4. A detailed statement of the act, with a statement of the place, year, month, day, and hour it was committed, if known.
5. A statement of the steps to be taken for the verification of the act.
6. A petition that the complaint be admitted; that the steps indicated in the foregoing number be taken: that the detention and imprisonment of the presumed criminal take place or that he be required to give bond for his temporary liberty, and that sufficient of his property be attached in cases in which this is proper.
7. The signature of the complainant, or that of another person at his request if he should not know how or not be able to sign, when the solicitor has no special power of attorney to make a formal complaint.

ART. 278. If the complaint should charge some crime which can be prosecuted at the instance of a party only, excepting rape or abduction, a certificate shall also be attached showing that proceedings to effect a conciliation have been held or attempted between the complainant and the defendant.

Nevertheless, proceedings of an urgent character for the verification of the acts or for the detention of the delinquent may be had without this requisite, the proceedings being afterwards suspended until it appears that the provisions of the foregoing paragraph have been complied with.[a]

ART. 279. In crimes of calumny or contumely committed at a judicial proceeding, there shall also be filed the permission of the judge or court having taken cognizance of such proceedings, in accordance with the provision of the Penal Code.[b]

ART. 280. The private complainant shall give security of the character and amount which the judge or court may fix, to answer for the results of the action.

ART. 281. The following shall be excused from complying with the provisions of the foregoing article:

1. The aggrieved person and his heirs and legal representatives.

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[a] According to article 467 of the Penal Code, in order to prosecute crimes for rape or abduction, a complaint on the part of the person injured is not necessary, a simple denunciation being sufficient, even though not made in writing.

Proceedings to effect a conciliation which the law requires to be held before a complaint is made for a private crime has no other object than to prevent, if possible, a criminal action by means of the consent of the respective parties, such a consent absolutely precluding the institution of such action, as it then involves a question legally closed.

The special character of such agreements does not permit of another effect being attributed to them, for the reason that a criminal complaint relates to a question which has been closed by the essential proceedings of the conciliation, and is therefore a matter decided by the competent judge, because the conciliation included in the respective instrument is really equivalent to a final decision, deserving greater respect, as it consists of the agreement of the persons interested. *Decision of February 12, 1886.*

[b] See article 486 of the Penal Code in Appendix II.

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2. In crimes of assassination or homicide, the widower or widow, the ascendants or descendants by consanguinity or affinity, the collateral relatives by consanguinity or uterine and by affinity up to the second degree, the heirs of the victim, and the fathers, mothers, and natural children referred to in subdivision 3 of article 261.

The exemption from giving bond does not apply to foreigners unless entitled thereto by virtue of international treaties or the principles of reciprocity.

TITLE III.—THE JUDICIAL POLICE.

ART. 282. The object of the judicial police, as well as the obligation of all individuals composing the same, is to ascertain the public crimes committed within its territory or district; to take, according to their powers, the steps necessary to verify said crimes and discover the delinquents and collect all the effects, instruments, or proof of the crime which may be in danger of disappearing, and to place the same at the disposal of the judicial authority.

If the crime should be one which can be prosecuted at the instance of a legitimate party only, they shall be under the obligation mentioned in the foregoing paragraph, if called upon.

ART. 283. The following shall constitute the judicial police and shall be assistants to the prosecuting officials, judges of examination, and municipal judges, in a proper case:

1. The administrative authorities entrusted with the public security and the prosecution of all or of some special crimes.
2. The employees or subordinates of the police of security, whatever be their denomination.
3. The mayors, deputy mayors, and ward mayors.
4. The chiefs, officials, and members of the civil guard or of any other body devoted to the prosecution of wrongdoers.
5. Watchmen, and any other municipal agents of the urban or rural police.
6. The special watchmen of forests, plantations, and farms, sworn or confirmed by the administration.
7. The heads of penal establishments, the wardens of prisons, and their assistants.
8. Sheriffs and the employees of superior and inferior courts.

ART. 284. As soon as the officials of the judicial police shall receive information of the commission of a public crime, or should be called upon to order any preliminary measures to be taken by reason of the commission of a private crime, they shall inform the judicial authority or the public prosecutor, should they be able to do so without discontinuing the preliminary proceedings.

Otherwise they shall do so upon the conclusion thereof.

ART. 285. Should any official of the judicial police of a higher rank than that of the official conducting the proceedings be present, the latter must inform him of all steps taken and immediately place himself at his orders.

ART. 286. When the judge of examination or municipal judge appear to conduct the *sumario*, the police authority or agent shall discontinue the preliminary steps in which he may be engaged and at once deliver any proceedings had to the aforementioned judge, as well as the effects connected with the crime which may have been

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collected, and shall hold the persons detained, if there are any, subject to his orders.

ART. 287. The officials constituting the judicial police shall, without delay, according to their respective powers, take such steps as may be entrusted to them by the prosecuting officials for the verification of the crime and the capture of the delinquents and any other steps entrusted to them during the course of the action by judges of examination and municipal judges.

ART. 288. The public prosecutors, judges of examination, and municipal judges may communicate directly with the officials of the judicial police, whatever be their rank, for all the purposes of this title; but if the service required of them should admit of delay, they must apply to the immediate superior of the official of the judicial police, provided they do not require the immediate assistance of the latter.

ART. 289. An official of the judicial police who for any reason whatsoever should not be able to comply with the demand or order received from the public prosecutor, judge of examination, municipal judge, or the authority or agent who took the first steps, shall immediately inform the person who made the demand or gave the order, so that he may provide for the execution thereof by other means.

ART. 290. If the cause should not be a legitimate one, the person who shall have given the order or made the demand shall inform the hierarchical superior of the person excusing himself in order that he may be disciplined, unless he shall have incurred some greater liability in accordance to law.

The hierarchical superior shall communicate to the authority or official who made the complaint the action taken by him with regard to his subordinate.

ART. 291. The commander of any public force who should not be able to render the aid requested of him by judges of examination or municipal judges or by an official of the judicial police, shall also observe the provisions of article 289.

The person making the demand shall so inform the immediate superior of the person excusing himself, for the purposes and in the manner mentioned in the paragraphs of the foregoing article.

ART. 292. The officials of the judicial police shall make, either on stamped or ordinary paper, an attested statement of the proceedings had by them, in which they shall specify, with the greatest minuteness, the facts ascertained by them, inserting the depositions and reports received and making a note of all the circumstances which they may have observed and which may be proof or evidence of the crime.

ART. 293. This attested statement shall be signed by the person who prepared it, and if he uses a seal he shall affix the same with his rubric upon every sheet.

The persons present, experts and witnesses, who shall have taken part in the proceedings set forth in the attested statement, shall be requested to sign that portion thereof which relates to them. Should they fail to do so the reason for their refusal shall be stated.

ART. 294. If it should be impossible for this statement to be prepared by the official whose duty it is to do so, it shall be substituted by a verbal detailed statement, which shall be reduced to writing in an authentic manner by the public prosecutor, judge of examination, or municipal judge to whom the attested statement is to be presented, the reason that it was not drafted in the usual manner being stated.

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ART. 295. In no case, excepting *force majeure*, shall the officials of the judicial police allow more than twenty-four hours to elapse without informing the judicial authorities or the public prosecutor of the steps which they may have taken.

Those violating this provision shall be disciplined by the imposition of a fine of not less than 62.50 or more than 250 pesetas, if the failure does not deserve to be classified as a crime.

Those who, without exceeding the time of twenty-four hours, should delay giving this information longer than necessary, shall be disciplined by the imposition of a fine of not less than 25 or more than 125 pesetas.

ART. 296. If they shall have taken proceedings by order or requisition of judicial or prosecuting authorities, they shall communicate the result obtained within the periods fixed in the order or requisition.

ART. 297. The attested reports prepared and the statements made by officials of the judicial police, as a consequence of their investigations, shall be considered denunciations for legal purposes.

Any other declarations which they may make must be signed and shall have the value of a deposition of a witness in so far as they relate to facts of their own knowledge.

In any case the officials of the judicial police are obliged to observe strictly all legal formalities in any proceedings which they may hold, and shall abstain, under their liability, from using means of investigation not authorized by law.

ART. 298. Judges of examination and prosecuting officials shall classify, in a secret register, the conduct of the officials who shall render services of judicial police under their inspection, and every six months, with reference to the said register, they shall communicate to the superiors of each of them the detailed classification of their conduct for the proper purposes.

When the officials of the judicial police who should be disciplined in accordance with this law are of a rank superior to that of the judicial or prosecuting attorney acting in the proceedings in which the offense was committed, the latter shall abstain from personally imposing the punishment, confining themselves to communicating the occurrence to the immediate chief of the person to be disciplined.

TITLE IV.—THE INVESTIGATION.[a]

CHAPTER FIRST.—*The sumario and the authorities competent to take cognizance thereof.*

ART. 299. The *sumario* consists of the proceedings had to prepare the trial and for the purpose of verifying and evidencing the commission of crimes with all the circumstances which may have a bearing upon their classification and the guilt of the delinquents, securing their persons and the pecuniary liabilities of the same.[b]

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[a] See Official Gazette of Porto Rico No. 57, Dec. 22, 1898, amending rules for preliminary investigations.

[b] According to a decision of September 20, 1886, the omissions incurred at this stage of the proceedings can not serve as a basis for the annulment of a final sentence, because they can be cured by the court and the cause reheard, and they may also be supplied at the instance of the parties thereto.

In the third rule of the circular of the office of the *Fiscal* of the Supreme Court of December 31, 1882, including in the report of September 15, 1883, it was

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ART. 300. Every crime of which a judicial authority takes cognizance shall be the subject of a *sumario*. Connected crimes, nevertheless, shall be included in one and the same proceeding.

ART. 301. The proceedings of the *sumario* shall be secret until the oral trial is begun, with the exceptions specified in this law.

The attorney or solicitor of any of the parties who shall improperly reveal the secret of the *sumario*, shall be punished by the imposition of a fine of not less than 125 or more than 1,250 pesetas.

The same penalty shall be incurred by any other person who, not being a public official, shall commit the same offense.

A public official, in the case of the foregoing paragraphs, shall incur the liability which the penal code may fix in the respective place.

ART. 302. The judge of examination may authorize the person or persons accused to take cognizance of the proceedings and steps of the *sumario* when they relate to any right which they may wish to exercise, provided that said authorization shall not prejudice the ends of the *sumario*.

If the latter should extend over a period exceeding two months, dating from the writ indicting one or more specific persons, the latter may demand of the examining judge that they be allowed to examine the proceedings had for the purpose of hastening the termination thereof, to which the said judicial authority must consent in so far as he does not consider it dangerous to the success of the preliminary investigations.

An appeal in complaint to the superior court of competent jurisdiction is the only remedy against a refusal in either case.

ART. 303. The formation of the *sumario*, whether begun *ex officio* or at the instance of a party, shall pertain to the judges of examination with regard to crimes committed within their judicial district or respective circuit, and in their absence to the others of the same city or town, if there be more than one therein, and upon their request or by their delegation, to the municipal judges.

This provision does not apply to causes specially intrusted by the organic law to specific tribunals, as for such causes the latter may appoint a special judge of examination or authorize the ordinary judge to conduct the *sumario*.

As examining judge can be appointed only a justice of the said tribunal or an official of the judicial service in active service on duty within the territory of said tribunal. After being appointed he shall act upon his own and independent jurisdiction.[a]

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stated that "the *fiscales* of audencias shall devote their attention to the special character of the *sumarios*, according to the new law, in order that they may be limited to the truly essential points of the same, securing the speediest conclusion possible."

[a] In causes for the cognizance of which a criminal chamber may be competent by reason of the class of persons against whom the proceedings are directed, can said chamber issue an order transmitting the records to the prosecuting official for him to make such requests concerning the investigation which he may deem proper?

Upon the conclusion of the proceedings of the *sumario* in such causes, when a judge conducts them by delegation, who shall decree the termination of the *sumario*?

"With regard to the first question, there is no doubt that the chamber may take the steps indicated."

"There is no reason why the prosecuting official should not request that such steps be taken which he may deem pertinent, because in the conduction of these

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If the examining judge be an associate justice, he may delegate his functions, in case of unavoidable necessity, to the judge of examination of the place where the proceedings are to be held.

If the crime from its nature be of those which can be committed only by authorities or officials subject to a superior jurisdiction, the ordinary judges of examination may, in urgent cases, order such measures of precaution to be taken which may be necessary to prevent their concealment; but they shall forward the proceedings within the shortest possible period, which in no case shall exceed three days, to the court of competent jurisdiction, which shall pass upon the institution of the *sumario*, and at the proper time shall decide whether the authority or official accused should or should not be indicted.

ART. 304. The chambers of administration of the territorial audiencias may also appoint a special examining judge when the causes involve crimes the extraordinary circumstances of which, or the conditions of the time or place of their execution, or of the persons involved therein either as aggrieved or authors, should furnish sufficient cause for the appointment of said judge in order to secure a better examination or a more certain verification of the facts.

The powers of the chambers of administration shall extend to causes proceeding from the audiencias situated within their circuits, and the appointments must be of the same officials mentioned in the foregoing article from among those on service within the circuit, preference being given, if possible, to one of the associate justices of the same, if the ordinary examining judge should not be authorized to conduct the *sumario*.

Chambers of administration as well as courts, when they avail themselves of the power mentioned in this and in the foregoing article, shall render a detailed report to the colonial department.

ART. 305. The appointment of special judges of examination which may be made in accordance with the foregoing articles shall and must be understood only for the conduction of the *sumario* with all its incidents. Upon the conclusion thereof the proceedings had therein shall be forwarded by the special judge to the court to which according to the provisions in force the cognizance of the cause pertains, in order that it may continue and decide the same according to law.

CHAPTER II.—*Formation of the sumario.*

ART. 306. In accordance with the provisions of the foregoing chapter, judges of examination shall conduct the *sumario* of public crimes under the direct supervision of the public prosecutor of the court of competent jurisdiction.

The supervision shall be exercised either by the public prosecutor establishing himself in person or through one of his assistants at the side of the examining judge, or by means of detailed certified state-

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sumarios, as well as of other *sumarios*, the prosecuting official exercises a supervision in accordance to law."

"With regard to the second, the power to declare the *sumario* terminated in the causes to which the question refers, is vested, as in all processes, in the examining judge, who, even though he shall have been delegated by the audiencia to conduct the *sumario*, exercises during the same individual and independent functions in accordance with the third paragraph of article 303 of the law of criminal procedure." (*Question No. 17 of the report of the office of the fiscal of the Supreme Court of 1887.*)

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ments, sufficiently explicit, which shall be transmitted to him by the examining judge at periodical intervals, and as often as requested, the public prosecutor being permitted in the latter case to submit his remarks in a respectful communication, and his petitions by requisitions equally respectful. He may also delegate his functions to the municipal prosecuting officials.

ART. 307. In case that the municipal judge should begin the institution of the preliminary proceedings of the *sumario*, as soon as the more urgent steps have been taken, as well as all those which the judge of examination may have ordered, he shall forward the cause to him, and shall never retain it for more than three days.

ART. 308. As soon as judges of examination, or municipal judges in a proper case, shall have information of the commission of a crime, they shall inform the prosecuting official of the proper audiencia, and judges of examination shall in addition inform the presiding judge of the latter of the formation of the *sumario* in a succinct statement sufficiently specific as to the act, its circumstances, and the author thereof within two days after the institution of the same.

Municipal judges shall make a report at once of the proceedings had to the proper judge of examination.

ART. 309. If the person against whom charges are made be of those subject by virtue of a special provision of the organic law to an exceptional tribunal, after the first proceedings have been had and before instituting proceedings against said person, orders shall be awaited from the competent court for the purposes of the provisions contained in the second paragraph and the last part of the fifth paragraph of article 303 of this law.

If the crime be of those which give rise to provisional imprisonment in accordance of the provisions of this law, and the presumed criminal should have been surprised *in flagrante*, he may be detained at once and placed under arrest, if necessary, without prejudice to the provisions of the foregoing paragraph.

ART. 310. Judges of examination may delegate to the municipal judges the holding of all proceedings and taking of all steps which this law does not reserve exclusively to the former, when any just cause prevents them doing so in person. But they shall seek to make a moderate use of this power and the immediate superior court shall take care to prevent and correct an unjustified frequency of these delegations.

ART. 311. The judge conducting the *sumario* shall take all the steps which may be suggested to him by the prosecuting officials or by the private complainant, if he does not consider them useless or prejudicial.

An appeal may be taken from all decisions refusing to take the steps requested, which appeal shall be allowed for review only before the proper audiencia or court of competent jurisdiction.

If the public prosecutor be not in the same locality as the judge of examination, instead of appealing, he shall enter a complaint before the proper tribunal, attaching for the purpose an abstract of the proceedings which he may consider necessary, which abstract must be furnished him by the judge of examination; and after a report from the latter the court shall decide what it may deem proper.

ART. 312. If a complaint be made, the judge of examination, after admitting the same, if proper, shall order such steps to be taken as

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are suggested therein, excepting those which he may consider contrary to law or unnecessary or prejudicial to the object of the complaint, which he shall refuse in a decision setting forth his reasons.

ART. 313. He shall reject the complaint in the same manner when the acts upon which it is based do not constitute a crime or when he does not consider that he has jurisdiction to conduct the *sumario* which is the object thereof.

An appeal for a review and stay of proceedings shall lie from the decision referred to in this article.

ART. 314. The proceedings requested and refused in the *sumario* may again be moved in the oral trial.

ART. 315. The judge shall cause a record to be made of all proceedings had at the instance of a party.

Of those ordered *ex officio* only such shall appear in the *sumario* the result of which shall be conducive to the object thereof.

ART. 316. The complainant may take part in all the proceedings of the *sumario*.

If the crime be a public one, the judge of examination may, notwithstanding the provisions of the foregoing paragraphs, declare, on motion of the prosecuting official or *ex officio*, that the *sumario* is secret from the complainant.

ART. 317. The municipal judge shall have the same powers as the judge of examination not to communicate the proceedings held to the private complainant.

ART. 318. Notwithstanding the duty imposed upon municipal judges to take, in a proper case, the first steps in a *sumario*, when the judge of examination shall have information of the commission of some crime of a serious character, or the verification of which might be difficult by reason of special conditions, or which may have caused alarm, he shall immediately betake himself to the place where the crime was committed and shall proceed to conduct the *sumario*, taking charge of the proceedings which may have been had by the municipal judge and receiving the verifications and data furnished him by the officials of the judicial police. He shall remain in said place as long as may be necessary to hold all the proceedings in which delay might cause inconvenience.

ART. 319. When the public prosecutor of the respective audiencia shall have information of the commission of any of the crimes mentioned in the foregoing article, he must proceed in person, or order that one of his subordinates proceed to the place of the occurrence, together with the judge of examination, in order to secure a better and more speedy elucidation of the facts, should he not be prevented from so doing by other occupations of as great or greater importance, without prejudice to proceeding in a similar manner in any other case in which he may consider it advisable.

ART. 320. The intervention of the civil plaintiff in the *sumario* shall be confined to securing the taking of such steps as may contribute to the success of his action, which steps shall be passed upon by the examining judge in his discretion.

ART. 321. Judges of examination shall conduct the *sumario* in the presence of their secretaries.

In urgent and extraordinary cases, in the absence of the latter, they may proceed with the intervention of one notary or of two

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hombres buenos of legal age, able to read and write, and who shall take an oath to observe faith and secrecy.

ART. 322. The proceedings of the *sumario* which may have to be held without the jurisdiction of the judge of examination or the district of the municipal judge ordering the same, shall be had in the manner prescribed in Title VIII of the first book, and shall be secret as to persons not connected therewith.

ART. 323. Notwithstanding the provisions contained in the foregoing article, when the place in which some proceeding of the *sumario* is to be held is without the jurisdiction of the examining judge, but at a place near the point where the latter may be, and there should be danger in delaying such proceeding, he may execute it in person, immediately advising the judge of competent jurisdiction.

ART. 324. If one month after the beginning of a *sumario* it should not have been concluded, the judge shall every week inform such persons as he informed at the beginning of said *sumario* of the causes which may have prevented the conclusion thereof.

In view of each of these communications, the presiding judges to whom they may have been transmitted and the court of competent jurisdiction shall order, according to their respective powers, what they may consider proper for a more speedy termination of the *sumario*.

Without prejudice to the provisions of this article, judges of examination are obliged to give to the prosecuting officials of audencias any other information they may request as to the status and progress of *sumarios*.

ART. 325. Judges of examination and municipal judges in a proper case shall be disciplinarily liable for any lack of zeal or activity in the conduction of *sumarios*, provided they are not criminally liable in accordance to law.

TITLE V.—PROOF OF THE CRIME AND VERIFICATION OF THE DELINQUENT.

CHAPTER I.—*The ocular inspection.*

ART. 326. If the crime prosecuted shall have left traces or material evidence of its commission, the examining judge or person acting in his stead shall collect and keep them for the oral trial, if possible, proceeding for this purpose to make an ocular inspection and a description of all that which might have any connection with the existence and nature of the act.

For this purpose he shall include in the record of the proceeding a description of the place of the commission of the crime, the location and condition of the objects found there, the topography or location of the dwellings, and any other details which might be utilized for the accusation or for the defence.

ART. 327. If advisable for a better elucidation or verification of the facts, a sufficiently detailed plan shall be made of the place, or photographs of the persons who may have been the subjects of the crime, or a copy or drawing of the effects or instruments of the same which may have been found.

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ART. 328. If a robbery be involved or any other crime committed by breaking, wrongful entry, or violence, the examining judge must describe the traces which may have been left, and he shall hear the opinion of experts as to the manner, instruments, means, or time of the commission of the crime.

ART. 329. In order to carry out the provisions contained in the foregoing articles, the examining judge may order that such persons as may have been found at the place of the commission of the crime shall not absent themselves during these proceedings, and, furthermore, that such other persons as may be found in any other nearby locality present themselves immediately, taking the depositions of each separately.

ART. 330. If no traces or evidence of the crime which is the subject-matter of the *sumario* shall have been left, the examining judge shall ascertain and establish, if possible, whether the disappearance of the material proof of the crime was natural, casual, or intentional, and the causes for said disappearance or the means employed for the purpose, proceeding thereupon to collect and include in the *sumario* evidence of any kind which it may be possible to secure with regard to the commission of the crime.

ART. 331. If the crime be of those which do not leave any evidence of their commission, the judge of examination shall seek to establish, by evidence of witnesses and by all other means of verification, the commission of the crime and the circumstances thereof, as well as the previous existence of the thing, if the object of the crime shall have been the removal thereof.

ART. 332. All the proceedings mentioned in this chapter shall be reduced to writing at the time of the ocular inspection, and shall be signed by the examining judge, prosecuting official, if present thereat, the secretary, and the other persons present.

ART. 333. If at the time of the proceedings mentioned in the preceding articles there should be some person indicted as the presumed author of the punishable act, he may be present thereat either alone or with the counsel he may select or that assigned him by the court, if he should so request, and either one may at this time make such observations as he may consider pertinent, a record thereof being made if not accepted.

For this purpose the order for the holding of this proceeding shall be communicated to the accused such time in advance as the character thereof will admit, and the proceeding shall not be suspended on account of the nonappearance of the accused or his counsel.

CHAPTER II.—*The corpus delicti.*

ART. 334. The examining judge shall seek to collect during the first moments the arms, instruments, or effects of whatsoever class which may bear upon the crime and which may be at or in the vicinity of the place where the latter was committed, or in the possession of the criminal, or in any other known place, making a record of the place, time, and occasion upon which found, describing the same minutely in order that a clear idea thereof and of the circumstances under which they were found may be formed.

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The record shall be signed by the person in whose possession they may be found, who shall be notified of the order to collect them.

ART. 335. Upon the finding of the person or thing the object of the crime, the examining judge shall describe in detail his or its state and circumstances, and especially all those which bear upon the punishable act.

If in view of the fact that a crime of falsification committed in documents or effects existing in dependencies of the State is in question, and therefore there should be unavoidable necessity to have the same at hand for their examination by experts and by the judge or court, they shall be demanded of the proper authorities, without prejudice to their being returned to the respective official bureaus upon the conclusion of the cause.

ART. 336. In the cases of the two foregoing articles, the judge shall also order the examination by experts, whenever such examination appears advisable in order to better weigh their connection with the crime, of the places, arms, instruments, and effects to which said articles refer, a record being made of the expert examination and report.

The accused and his counsel may also attend this proceeding, in accordance with the provisions of article 333.

ART. 337. If at the time of describing the person or thing the subject of the crime, and the places, arms, instruments, or effects connected therewith, persons should be present or known who can testify as to the manner and form of the commission of said crime and the causes for the alterations observed in said places, arms, instruments, or effects, or with regard to their previous condition, they shall be examined immediately after the description and their depositions shall be considered supplementary thereto.

ART. 338. The instruments, arms, and effects referred to in article 334 shall be sealed, if possible, and their retention and preservation shall be ordered. The proceedings to which this may give rise shall be signed by the person in whose possession they may have been found or, in his absence, by two witnesses.

If by reason of their character the objects can not be preserved in their original condition, the judge shall decide what he may deem advisable for their preservation in the best manner possible.

If among the objects collected there be any sacred vessels or things, the examining judge shall order that they be separated from the rest and kept apart, avoiding any profanation.

ART. 339. Should it be advisable to receive any expert opinion as to the means employed for the removal of the *corpus delicti*, or as to the evidence of any kind which, in the absence thereof, may have been collected, the judge shall make an order at once in the manner prescribed in Chapter VII of this title.

ART. 340. If the examination shall take place by reason of a death by violence or under suspicious circumstances, before proceeding to bury the body or immediately after its disinterment, after the description ordered by article 335 has been made, it shall be identified by witnesses, who upon viewing the same shall give satisfactory reasons for their identification.

ART. 341. Should there not be any witnesses of identification, if the condition of the body shall permit, it shall be exhibited to the public for twenty-four hours at least before the holding of the autopsy, there being stated on a poster, which shall be affixed at the

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door of the morgue, the place where and hour and day when found, and the judge conducting the *sumario*, in order that any person having any information which might contribute to the identification of the body or the clearing up of the crime and of its circumstances may communicate the same to the examining judge.

ART. 342. If, notwithstanding all these measures, the body should not be identified, the judge shall collect everything found upon the body in order that it may serve for the identification at the proper time.

ART. 343. In the *sumarios* referred to in article 340, even in case the cause of death may be presumed by a superficial examination, the autopsy on the body shall be proceeded with by the official physicians or in a proper case by such persons as the judge may designate, who, after describing said operation exactly, shall make a report upon the cause of death and the circumstances thereof.

In making the autopsy the provisions of article 333 shall be observed.

ART. 344. Under the name of official physician there shall be in every court of examination one physician charged with assisting the administration of justice in all cases and proceedings in which the intervention and services of his profession may be necessary or advisable at any point of the judicial district.

ART. 345. The official physician shall reside at the seat of the court to which he may have been assigned, and may not absent himself therefrom without the permission of the judge, of the presiding judge of the criminal audiencia, or of the Colonial Minister, depending upon whether the absence is not to exceed eight days in the first case, twenty in the second, and the time which the Minister may deem advisable in the third.

ART. 346. In cases of absence, sickness, and vacancies, the official physician shall be substituted by another professor performing similar duties in the same town; and should there be none, by the one the judge may designate, a report being made to the presiding judge of the criminal audiencia.

The same shall be done when for any other reason whatsoever the examining judge can not avail himself of the services of the official physician. Those who shall refuse to fulfill this duty or shall evade it shall incur a fine of not less than 62.50 or more than 250 pesetas, and if they shall insist in their refusal they shall be tried as guilty of serious disobedience.

ART. 347. The official physician is obliged to take all measures and perform all duties pertaining to his profession and office with the zeal, care, and speed which the nature of the case and by the administration of justice require.

ART. 348. If in some case, in addition to the attendance of the official physician, the judge shall consider the cooperation of one or more physicians to be necessary, he shall make the proper appointment.

The provisions of the foregoing paragraph shall also apply when, on account of the gravity of the case, the official physician shall consider the cooperation of one or more physicians to be necessary and the judge concurs in said belief.

ART. 349. Whenever compatible with the proper administration of justice, the judge may grant in his discretion a period to the official physician within which to give his evidence, prepare the reports, and

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answer inquiries and prepare any other documents which may be necessary, permitting him likewise to designate such hours as he may consider best adapted for the autopsies and the disinterment of bodies.

ART. 350. In cases of poisoning, wounds, and any other bodily injuries, the official physician shall be charged with the professional attendance upon the patient, unless the latter or his family prefer that of one or more professors they may select, in which case the former shall exercise the surveillance and supervision incumbent upon him in order to comply with the duties of the official medical service.

The accused shall have the right to designate one professor who, together with those appointed by the examining judge or the one designated by the complainant, shall take part in the attendance upon the patient.

ART. 351. When the official physician, or, in his absence, the physician or physicians appointed by the examining judge, shall not agree as to the curative treatment or plan employed by the professors which the patient or his family may have appointed, they shall inform the examining judge for the purposes which may be proper according to justice. The same may be done in a proper case by the professor appointed by the accused.

The examining judge, when such disagreement occurs, shall appoint a larger number of professors to give an opinion, and after all the data necessary has been recorded, the same shall be filed for use when the cause is to be decided.

ART. 352. The provisions of the foregoing article apply when the patient enters the prison, hospital, or other institution and is attended by the physicians of the same.

ART. 353. The autopsies shall be held in the public place which shall be set aside by the administration in every town or judicial district for this purpose and as a morgue. Nevertheless, the examining judge may order, when he considers it advisable, that the operation take place elsewhere, or at the residence of the deceased, if his family shall request it, and if it will not prejudice the success of the *sumario*.

If the examining judge be not able to attend the anatomical operation, he shall delegate an official of the judicial police, the secretary in the cause certifying to his attendance as well as to the occurrences thereat.

ART. 354. If death shall occur as a consequence of some accident on a railroad during the progress of a train, said train shall be detained only the time necessary to remove the body or bodies from the road, a record being previously made of their situation and condition, either by the authority or official of the judicial police who may appear at once at the place of the accident, or by those who may accidentally be on the same train, or, in the absence of such persons, by the employee of the highest rank in whose charge the train may be, but preference must be given in such case to the employee or agents of the government.

The proper steps shall likewise be taken in order that, without prejudice to the train continuing its course, the authority which is to conduct the first proceedings may be advised and may order the removal of the bodies, and the persons above named shall at once collect the data and information necessary, which they shall commu-

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nicate as soon as possible to the authority competent to conduct the first proceedings, in order that the cause of the disaster may be ascertained.[a]

ART. 355. If the criminal act giving rise to the institution of any cause whatsoever should consist in bodily injuries, the physcians attending the injured person shall be obliged to make a report of his condition and improvement at such periods as may be fixed, and immediately upon any change taking place which should be brought to the attention of the examining judge.

ART. 356. The work of chemical analysis necessary during the hearing of criminal proceedings shall be performed by doctors of medicine, of pharmacy, of the physical chemical sciences, or by engineers who may have devoted themselves to chemical specialties. Should there be no doctors in said sciences, licentiates may be appointed having sufficient knowledge and practice to perform said work.

Judges of examination shall appoint, from among those included in the foregoing paragraph, the experts who are to make an analysis if the substances which in each case the administration of justice may require.

If in the judicial district where the proceedings are being held there should be none of the experts referred to in the foregoing paragraph, or those residing therein should be legally or physically unable to make the analysis, the judge of examination shall so inform the presiding judge of the criminal chamber or audiencia, and the latter shall appoint the expert or experts who are to perform the service from among the persons designated in the first paragraph residing in the territory. At the same time he shall communicate the appointment of experts to the examining judge in order that he may place the substances which are to be analyzed at his disposal, with the proper precautions and formalities.

The person or persons accused shall have the right to appoint an expert to be present with those appointed by the judge.

ART. 357. The said professors shall render this service in the capacity of titular experts, and can not refuse to do so without just cause, the provisions contained in the second paragraph of article 346 being otherwise applicable to them.

ART. 358. Each of the said professors who makes a report as an expert by virtue of a judicial order shall receive the sum fixed in the regulations as his fee and in compensation of the expenses which he may incur in the performance of this service, and he shall not be obliged to work more than three hours per day, except in urgent or extraordinary cases, which fact shall be entered upon the record.

ART. 359. Upon the conclusion of the analysis and after the signing of the proper declaration, the professors shall forward to the examining judge, or to the presiding judge of the criminal audiencia or chamber. in a proper case, a signed report of the objects or substances analyzed and of their fees, in accordance with the provisions of the foregoing article.

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[a] It will be necessary to fulfill the formalities required by this article, not only in case the death shall have occurred on account of some railroad accident, but also when a body is found upon a railroad and the cause of death unknown. (*Statement of the fiscal of the Supreme Court of September 15, 1883, No. 16.*)

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The court shall address this report, with the remarks it may consider proper, to the presiding judge of the criminal audiencia, who shall transmit the same to the Colonial Department, unless he shall find that an excessive number of hours appear to have been employed in any analysis, in which case he shall order that three coprofessors of the one who made it shall make a report, and in view thereof he shall confirm or reduce the fees claimed to the just amount, transmitting all with his own report to the said department.

The same shall be done by the presiding judge of the audiencia when the analysis is made during the oral trial.

ART. 360. The Colonial Minister, if he considers the fees excessive, may also, before ordering their payment, call for a report, and, in a proper case, a new taxation of the same by the academy of exact physical and natural sciences, and in view of the statement this corporation may furnish, or the new taxation made, the fees shall be confirmed, or they shall be reduced to what may be just, and their payment ordered.

ART. 361. In order to make this payment the Colonial Minister shall include in the budgets for each year the amount which may be considered necessary.

ART. 362. The professors mentioned can not demand other fees than those previously fixed for this service, nor require that the judge or court furnish them laboratory appliances or reactive agents, nor subordinate assistants to fulfill their duties.

If, on account of the lack of experts, of a laboratory, or reactive agents, it should not be possible to perform the analysis within the jurisdiction of the criminal audiencia, it shall take place in the capital of the province, or, as a last resort, in that of the island.

ART. 363. The superior and inferior courts shall order chemical analyses to be made only in cases in which they are considered absolutely indispensable for the necessary judicial investigation and the proper administration of justice.[a]

ART. 364. In the crimes of robbery, theft, fraud, or in any other crime in which the previous existence of the things the subject of the robbery, theft, or fraud must appear, should there not be any eyewitnesses to the act, an investigation shall be made as to the antecedents of the person appearing as the injured party, and as to all the circumstances which may offer proof that the latter was in the possession thereof at the time of the commission of the crime.

ART. 365. If, for the classification of the crime or of its circumstances, it should be necessary to estimate the value of the thing which may have been the object thereof or the amount of the damage caused or which might have been caused, the judge shall hear the owner or person prejudiced thereon, and shall thereupon order the expert investigation in the manner determined in chapter VII of this title. The judge shall furnish to the experts appointed the things and direct elements to be considered in the report, and should they not be under his control he shall furnish them the proper data which can be

[a] Courts can not reject evidence which consists in a chemical analysis, provided it really is pertinent, even though said analysis shall have been made during the *sumario*, without it being necessary that said evidence be considered absolutely indispensable, as required by article 363, but only that there exist probable important results. (*Statement of the fiscal of the Supreme Court of September 15, 1883, No. 17.*)

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collected, admonishing them in such case to make the taxation and appraisal of the losses and damages in a prudent manner, in accordance with the data furnished.

ART. 366. The proceedings provided for in this and the preceding chapter shall be had before the others of the *sumario*, their execution not being stayed except to secure the person of the presumed criminal or to give the assistance necessary to those injured by the crime.

ART. 367. In no case shall claims or interventions be admitted during the *sumario* whose object is the return to the effects which constitute the *corpus delicti*, whatever be their character or the person demanding the same.

CHAPTER III.—*The identity of the delinquent and his personal circumstances.*

ART. 368. Whosoever shall make a charge against a specific person must identify the same judicially if the examining judge, the complainants, or the accused himself have reason to consider this proceeding necessary for the identification of the latter with regard to those making the charges, in order that there may be no doubt as to what person the former refer.

ART. 369. The identification shall take place by placing before the person who is to make it the person to be identified, producing said person in union with other similar external circumstances. In the presence of all of them or from a point where he can not be seen, as the judge may consider more advisable, the person to make the identification shall state if the person to whom he may have referred in his declarations is in the group, and in an affirmative case he shall designate him in a clear and specific manner.

In the record made all the circumstances of the act shall be stated, as well as the names of all who may have composed the group.

ART. 370. If there be more than one person to identify another person, the proceeding mentioned in the foregoing article must be held separately as to each of them, without their being allowed to communicate with each other until the last identification has been made.

If there be several to be identified by one and the same person, their identification may take place at one proceeding.

ART. 371. He who shall detain or arrest a presumed criminal shall take the precautions necessary in order that the person detained or arrested shall not make any changes in his person or dress, which may render his identification difficult by the proper person.

ART. 372. Similar precautions must be taken by the wardens of prisons and the heads of detention establishments; and if any regulation dress be used in the institutions under their charge, they shall carefully preserve the clothing worn by the persons arrested or detained upon entering the establishment, in order that they may clothe them as often as may be necessary for purposes of identification.

ART. 373. If any doubt should arise as to the identity of the accused, said identity shall be sought to be established by all means which may be conducive to this object.

ART. 374. The judge shall make a record, with the greatest minuteness possible, of the personal description of the accused, in order that the record may serve as proof of his identity.

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ART. 375. In order to show the age of the accused and prove the identity of his person, a certified copy of his birth record in the civil registry or of his baptismal certificate, should he not be inscribed in the registry, shall be produced at the *sumario*.

In every case, if it be not possible to ascertain the civil registry or parish in which the birth or the baptism of the accused should appear, or his record of birth or baptism should not exist, and when by reason of the accused stating that he was born at a point at some distance, it should be necessary to employ much time in order to produce the proper certificate at the cause, the *sumario* shall not be stayed, and the document mentioned in the foregoing article shall be supplied by a report of the official physicians or of those appointed by the judge as to his age and after his physical examination.

ART. 376. If there be no doubt as to the identity of the accused, and he is known to have attained the age which the penal code requires in order that he may be held criminally liable to the fullest extent, the proof mentioned in the foregoing article may be dispensed with, if the production thereof should offer any difficulty or occasion any extraordinary delay.

In the subsequent proceedings and during the trial the accused shall be designated by the name by which he is known or by that which he claims.

ART. 377. If the examining judge should consider it advisable, he may call for reports as to the moral character of the accused, of the ward mayors or of the proper police officials of the town or towns in which he may have resided.

These reports shall set forth the reasons therefor, and should it not be possible to state reasons, the cause for not doing so shall be stated.

Those who shall give these reports shall not incur any liability whatsoever except in case of malice duly proven.

ART. 378. The judge may furthermore take testimony as to the conduct of the accused of all persons who, in view of their acquaintance with him, can give information thereon.

ART. 379. The criminal antecedents of the accused shall be produced in the cause, being requested of the courts where it is presumed they may be of record; and with regard to persons accused who may have resided in the Peninsula and adjacent islands after the establishment of the central register of criminals of October 2, 1878, they shall also be requested of the Department of Grace and Justice through the Colonial Department.

The chief of the register in the department is obliged to furnish the antecedents requested of him, or a negative certificate in a proper case, within a period of three days, not subject to extension, from the date of the receipt of the request, stating, should he not do so, the legitimate cause which prevented him from furnishing the same.

Courts shall also take special care to fulfill this service at once, and such officials as postpone the same shall be disciplined.

ART. 380. If the accused be more than nine years and under fifteen years of age, the judge shall hear evidence as to his judgment and especially as to his ability to distinguish the criminal character of the act which may have given rise to the cause.

At this hearing shall be heard such persons as are able to give positive evidence on account of their personal circumstances and the rela-

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tions they may have had with the accused before and after the commission of the act. In their absence two professors of primary education shall be appointed, who, together with the official physician or the person acting in his stead, shall examine the accused and give their opinion.

ART. 381. If the judge shall notice in the accused signs of mental aberration, he shall immediately subject him to the observation of the official physicians in the institution in which he may be under arrest, or in another public institution if better adapted to the purpose or if the accused be at liberty.

The physicians shall in such case make their report in the manner prescribed in Chapter VII of this title.

ART. 382. Without prejudice to the provisions of the foregoing article, the judge shall take testimony on the mental aberration of the accused in the manner prescribed in art. 380.

ART. 383. If the insanity should occur after the commission of the crime, upon the termination of the *sumario* the cause shall be ordered filed by the court of competent jurisdiction until the accused shall recover his health, such other measures being taken with regard to the latter as are prescribed by the penal code for those committing the act while insane.

Should there be another person accused of the same crime who is not in the same condition as the former, the cause shall continue only with regard to said person.

ART. 384. As soon as it shall appear from the *sumario* that there is reasonable indication of the criminality of a specific person, a writ of indictment shall issue and an order that proceedings be had in the manner and form prescribed in this and the other titles of this law.

The accused may, from the moment he is indicted, secure the counsel of an attorney, while not *incomunicado*, and avail himself of his services either to secure a speedy termination of the *sumario*, or to request the taking of such steps as may be of interest to him and make demands affecting his condition. In the first case he may complain to the audiencia, and in the other two cases take an appeal to the same, if the judge of examination should not accede to his wishes.

These appeals shall be admissible for a review of the proceedings only.

In order to comply with the provisions of this article, the judge of examination shall order that an indicted person under legal age be assigned a solicitor and attorney, unless he himself or his legal representative designate persons who enjoy their confidence to act in his behalf and defense.

CHAPTER IV.—*Declarations of the accused.*

ART. 385. The judge, at his own instance or on motion of the public prosecutor or of the private complainant, shall have the accused make as many declarations as he may consider advisable for the verification of the facts, and neither the private accuser nor the civil plaintiff can be present at the interrogatory when it is thus ordered by the examining judge.

ART. 386. If the accused should be under arrest, his first declaration shall be taken within a period of twenty-four hours. This period

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may be extended forty-eight hours more, should there be serious cause therefor, which cause shall be stated in the order of extension.

ART. 387. No oath shall be administered to accused persons, who shall only be admonished to tell the truth, and the judge of examination shall advise them that they must answer in a clear, precise, and truthful manner such questions as may be put to them.

ART. 388. In the first declaration the accused shall be asked his name, paternal and maternal surnames, nickname (should he have any), age, nativity, residence, conjugal condition, profession, art, trade, or means of livelihood, if he has any children, if he has been previously criminally prosecuted, for what crime, before what judge or court, what punishment was imposed upon him; whether he served his sentence, whether he is able to read and write, and if he knows the reason for his indictment.

ART. 389. The questions put to him in all declarations which he may be obliged to make shall be directed to the verification of the acts and the participation of the accused therein and of the other persons who may have been accessories before or after the fact.

The questions shall be direct, and it shall not be permissible to propound them in a captious or suggestive manner.

Nor shall any coercion or threats whatsoever be employed against the accused.

ART. 390. The statements made by the persons accused or answers which they give shall be oral. Nevertheless, the judge of examination, always taking into consideration their circumstances and the character of the cause, may permit them to prepare in his presence a written answer upon points difficult to explain, or also that they consult notes or memoranda in his presence.

ART. 391. All the objects which constitute the *corpus delicti* or those which the judge may consider advisable shall be exhibited to the accused for his identification.

He shall be questioned upon the origin of said objects, their purpose, and the reason they were found in his possession; and in general he shall be questioned on any other circumstance which may tend to establish the truth.

The judge may order the accused, but without employing any coercion whatsoever, to write in his presence some words or sentences, if he considers this measure useful to dissipate the doubts which may arise as to the legitimacy of some writings attributed to him.

ART. 392. If the accused shall refuse to answer or shall feign insanity, deafness, or muteness, the judge of examination shall admonish him that, notwithstanding his silence and simulated illness, the proceedings shall continue.

The secretary shall make a record of these circumstances and the examining judge shall proceed to investigate the reality of the illness which the accused feigns, observing for this purpose the provisions contained in the respective articles of Chapters II and VII of this title.

ART. 393. If the examination of the accused is extended over a lengthy period, or the number of questions put to him is so great that he should have lost the serenity of mind necessary to answer the other questions to be asked him, the examination shall be suspended, the accused being allowed the time necessary to rest and recover his calm-

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ness. The duration of the interrogatory shall always be recorded in the declaration itself.

ART. 394. A judge violating the provisions of the foregoing article and of article 389 shall be disciplined, unless he incurs greater liability.

ART. 395. The accused can not, under the pretext of the want of jurisdiction of the judge, excuse himself from answering the questions put to him, although he may plead to the jurisdiction, such plea being entered upon the record.

ART. 396. The accused shall be permitted to state what he may consider proper as to his exculpation or for the explanation of the acts, such citations as he may make and other proceedings suggested by him being promptly executed if the judge should consider them conducive to the verification of his statements.

In no case can charges or reconventions be made against the accused, nor shall any part whatsoever of the *sumario* be read to him, excepting his previous deposition, should he so request, unless the judge shall have authorized the publicity of the *sumario* in whole or in part.

ART. 397. The accused may himself dictate the depositions. Should he not do so, the judge shall do so, seeking, in so far as possible, to record the very words which the former may have used.

ART. 398. Should the accused not know the Spanish language or be a deaf-mute, the provisions of articles 440, 441, and 442 shall be observed.

ART. 399. When the judge considers it advisable to examine the accused at the place of the acts upon which he is to be examined, or in the presence of the persons or things related thereto, the provisions of article 438 shall be observed.

ART. 400. The accused may declare as often as he wishes, and the judge shall immediately take his deposition, if it bears any relation to the cause.

ART. 401. The questions and answers shall be literally embodied in the deposition.

ART. 402. The accused may read the deposition and the judge shall inform him of such right.

Should he not avail himself of this right, the secretary shall read it in his presence.

ART. 403. The provisions of article 450 shall be observed with regard to erasures or changes.

ART. 404. The proceeding shall be signed by all who may have taken part therein and shall be authenticated by the secretary.

ART. 405. If in subsequent depositions the accused should contradict his first statements or should retract his previous confessions, he must be interrogated as to the reasons for his contradictions and the causes for his retraction.

ART. 406. The confession of the accused shall not excuse the judge from taking all the steps necessary in order to be convinced of the truth of the confession and the existence of the crime.

With this end in view the examining judge shall interrogate the confessed criminal in order that he may explain all the circumstances of the crime and all that may contribute to verify his confes-

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sion, if he was the principal or an accomplice, and if he knows any persons who were witnesses or may have knowledge of the acts.[a]

ART. 407. With regard to the incommunication of the accused the provisions of articles 506 to 511 shall be observed.

ART. 408. The reasons for the order of incommunication shall not be read to the accused when notified thereof, nor shall a copy of the same be given him.

ART. 409. In order to take the deposition of an accused person under age the appointment of a curator shall be unnecessary.

CHAPTER V.—*Depositions of witnesses.*[b]

ART. 410. All persons residing within Spanish territory, whether natives or foreigners, who are not prevented therefrom, shall be obliged to appear upon a judicial citation to declare all they may know in the matter upon which they may be questioned, provided they be cited with the formalities prescribed by law.[c]

ART. 411. The King, his consort, the crown prince, and the regents of the Kingdom are excepted from the provisions of the foregoing article.

ART. 412. The following shall also be exempted from answering the citation of the judge, but not from testifying:

1. The other royal personages.
2. The Ministers of the Crown.
3. The president of the Senate and of the Congress of Deputies.
4. The president of the Council of State.
5. The judicial authorities of a rank higher than that of the judge receiving the deposition.
6. The governor-general of the island, the civil governor, the chief of finance of the province, the captain-general of the district, and the military governor within whose jurisdiction the testimony is to be taken.

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[a] This is understood while the cause is at the stage of the *sumario*, because if at the opening of the oral trial the accused confesses to the crime and his counsel consents to the confession, the penalty applicable being a correctional one, sentence shall be passed without the necessity of further proceedings, in accordance with articles 688 and 694. A confession is not sufficient for a conviction for crimes committed by means of the press, in accordance with article 820.

[b] This chapter prescribes the formalities and requisites of depositions of witnesses during the *sumario* before the judge of examination. After the trial has commenced, the examination of the witnesses takes place in accordance with articles 701 to 722.

[c] Taking into consideration the provisions of articles 410 and 420 of the law of criminal procedure, the doubt has arisen as to whether all witnesses who do not appear to testify incur the penalty prescribed in the latter article.

This doubt arises only from the fact that article 410 states the obligation of witnesses to appear upon a judicial call to testify to all they may know upon the matters on which they are questioned, the following words being added: "If they are cited therefor with the formalities prescribed by law," and as there are cases in which, according to article 430 of said law, a witness can be cited verbally, some believe that then the corrections or liabilities of the said article 420 do not apply.

In simply observing that this legal text imposes said corrections or liabilities upon a witness who does not appear upon a judicial call, or refuses to testify in absolute terms, that is to say, without making any distinction whatsoever with regard to the form employed for his citation, it will be understood that it makes no difference in the application of said article to him that he shall have been cited verbally or with the formalities prescribed by law. (*Report of the fiscal of the Supreme Court of September 15, 1883, No. 18.*)

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7. Ambassadors and other diplomatic representatives accredited to the Spanish Government.

8. The captains-general of the army and navy.

9. Archbishops and bishops.

ART. 413. When the testimony of any of the persons mentioned in the foregoing article should be necessary or advisable, the judge shall go to their domicile or official residence, after notifying them in advance, fixing a day and hour.

ART. 414. The refusal of any of the persons mentioned in article 412 to receive the judge at their domicile or official residence, or to declare all they may know as to what may be asked them with regard to the facts of the *sumario*, shall be communicated to the Supreme Court for the proper purposes.

The persons mentioned in subdivision 7 of said article are excepted from the provisions of the foregoing paragraph. If said persons should thus object, the judge shall immediately communicate it to the colonial minister, transmitting a certified copy of the interrogatory, and he shall abstain from taking any proceeding with regard to them until the minister communicates to him the royal order which may issue in the case.

ART. 415. The persons included in subdivisions 2, 3, 4, 5, 6, 8, and 9 of article 412 may testify in writing as to the facts of which they have information by reason of their offices.

The officials of the judiciary or of the prosecuting department included in this case may testify in the same manner.

The persons mentioned in subdivision 7 shall be requested to give their testimony in writing, there being forwarded for this purpose to the colonial department, with a respectful communication for the State Department, an interrogatory which shall embrace all questions which they must answer, in order that they may do so through diplomatic channels.

ART. 416. The following are excused from the obligation of testifying:

1. The relatives of the accused in a direct ascending or descending line, his spouse, his uterine brothers or sisters, and his lateral blood relatives up to and including the second civil degree, as well as the natural parents referred to in subdivision 3 of article 261.

The examining judge shall inform the witness included in the foregoing paragraph that he is not obliged to testify against the accused, but that he may make the statements which he may deem proper, the answer which he may give to this notice being recorded.[a]

2. The attorney of the accused, with regard to the facts which the latter may have confided to him as his counsel.

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[a] Even though the parents of the accused and other persons, who, in accordance with this and the two following articles, can not be forced to testify, shall have testified at the *sumario*, they are not thereby obliged to testify at the oral trial. (*Statement of the fiscal of the Supreme Court of September 15, 1883, No. 19.*)

Even though at the time an examining judge takes the testimony of a brother of an accused person during the *sumario* there should not be recorded, as required by article 416 of the law of criminal procedure, the answer of this witness to the notice given him as to his privilege of not testifying against his brother; and even though it should not have been ordered, as was ordered at the oral trial on motion of the prosecutor, that his previous deposition be read on account of his refusal to testify at the trial, these breaches of procedure are in no wise

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If any of the witnesses should bear the relations indicated in the foregoing paragraph to one or more of the accused, he shall be obliged to testify with regard to the others, unless his evidence might compromise his relative or client.

ART. 417. The following can not be obliged to testify as witnesses:

1. Ecclesiastics and ministers of the dissenting cults, as to the facts revealed to them in the exercise of the functions of their ministry.

2. Public officials, civil as well as military, of whatsoever class, when they can not testify without violating secrets which by reason of their office they may be obliged to preserve, or when, acting by virtue of obedience due, they should not be authorized by their hierarchical superior to give the testimony requested of them.

3. Those physically or morally incapacitated.

ART. 418. No witnesses can be forced to testify upon a question an answer to which might materially or morally and in a direct and important manner prejudice either the person or the fortune of any of the relatives referred to in article 416.

The case is excepted where the crime is of great gravity by reason of its being an attempt against the security of the State, the public peace, or the sacred person of the King or of his successors.

ART. 419. If the witness should be physically unable to answer the judicial call, the examining judge who may have to take his deposition shall go to his residence, provided that the interrogatory will not endanger the life of the sick person.

ART. 420. He who not being unable to do so, should not attend at the first judicial call, excepting the persons mentioned in article 412, or should refuse to testify as to what he may know with regard to the facts upon which he may be interrogated, if not included in the exceptions of the foregoing articles, shall incur a fine of from 12.50 to 125 pesetas; and should he persist in his refusal, he shall be conducted, in the first case, into the presence of the examining judge by the employes of the authorities and tried for the crime of refusing assistance which the penal code defines with regard to witnesses and experts, and in the latter case he shall also be tried for the crime of serious disobedience to the authorities.

The fine shall be imposed at the time the offense is noticed or committed.[a]

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included among those which said law of procedure in its article 911, and in the others which relate to appeals for annulment for breach of form, mentions as sufficient for the allowance of such appeal. (*Decision of December 7, 1883.*)

The exemption from the obligation to testify granted by this article can not be considered as subordinated to the privilege granted the parties by art. 730. (*Decision of November 13, 1885.*)

[a] The doubt having arisen as to whether an insolvent witness who shall fail to appear at the oral trial can be declared subject to imprisonment in lieu of the fine which may have been imposed upon him, when he can not pay it on account of not having property with which to do so, the fiscal of the Supreme Court, to whom this question was submitted, replied:

"Not at all; the law of criminal procedure does not authorize such a practice. Article 420 specifies what should be done in case a witness who has been fined for nonappearance at the trial shall continue in default; that is to say, that he be brought before the court by the agents of the authorities for the crime of refusing assistance. The law does not say anywhere that persons fined shall suffer imprisonment in lieu thereof in case of insolvency, and therefore the provisions of the aforesaid article shall apply to them." (*Sixth question of the report of the fiscal of the Supreme Court of September 15, 1887.*)

It makes no difference in the application of this article whether the witness has been cited verbally or with the formalities prescribed by law. (*Statement of the fiscal of the Supreme Court of September 15, 1883, No. 18.*)

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ART. 421. The judge of examination, or the municipal judge in a proper case, shall cause to appear before him and shall examine the witnesses cited in the denunciation or complaint, or in any other declarations or proceedings, and all others who shall have knowledge of facts or circumstances or shall possess information of use in the proof or verification of the crime and of the delinquent.

Nevertheless, the service of impertinent or useless citations shall be sought to be avoided.[a]

ART. 422. If the witness resides without the judicial district or the municipal district of the judge conducting the *sumario*, the latter shall abstain from ordering him to appear before him, unless he shall consider it absolutely necessary for the verification of the crime or for the identification of the person of the delinquent, ordering him in such case to appear by a writ setting forth his reasons.

He must also avoid the appearance: Of the employes of the public surveillance who may reside at a point, other than the seat of the court, of the heads of public or private institutions whose duties constitute a permanent service, of station chiefs, engineers, firemen, conductors, telegraphers, factors, collectors, switchmen, or other agents discharging similar duties, whom he shall cite through their immediate chiefs when their appearance is absolutely necessary.

ART. 423. In the case of the general rule included in the first paragraph of the foregoing article as well as in that of the second, when the urgency of the declaration should be such as not to admit of the delay consequent to the citation of the witness through his immediate chiefs, and the employe in question should not be able to abandon the service which he renders without serious danger or inconvenience to the public, the examining judge in the cause shall commission the judge of the municipal district or of the judicial district within whose jurisdiction the witness may be to take the deposition.

ART. 424. If the witness should reside abroad, letters requisitorial shall be directed through diplomatic channels and the colonial department to the foreign judge competent to take the deposition. The letters requisitorial must contain the information necessary and indicate the questions which are to be put to the witness, without prejudice to said judge amplifying said questions prudently and in his discretion.

If the appearance of the witness before the examining judge or court be indispensable and he should not voluntarily appear, his conduct shall be communicated to the colonial department in order that it may take the action which it may consider proper.

ART. 425. If the person called upon to testify should discharge public duties or fill a public office, notice shall be given to his immediate superior at the time the citation is served in order that a substitute may be appointed during his absence if the public interest or security so requires.

ART. 426. Witnesses shall be cited in the manner prescribed in Title VII of the first book of this law.

ART. 427. If the witness is not to appear before the examining judge to testify, the details necessary for the designation of the witness and the questions he is to answer shall be embodied in the letters rogatory, letters requisitorial, or mandate issued, without prejudice

[a] In accordance with article 790, in causes for flagrant crimes when several witnesses testify, only the depositions of the most important shall be recorded.

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to the questions which the judge or court receiving his deposition may consider advisable to put to him in order better to ascertain the facts.

ART. 428. The secretary of the judge commissioned who is to authenticate the deposition, shall issue the certificate prescribed in article 175 with all the details mentioned therein, and with a statement to the effect that the deposition must be taken by virtue of letters requisitorial, letters rogatory, or a mandate.

ART. 429. Witnesses under military jurisdiction may, in the discretion of the judge of examination, be examined by him as other witnesses, or by the military judge of competent jurisdiction. In the former case the judge of examination must order that the citation of the witness be brought to the notice of the commander of the corps to which he may belong. In the latter case the provisions of the two foregoing articles shall be observed.

If any witness under military jurisdiction should refuse to appear before the judge of examination, or should refuse to take the oath or answer the interrogatories put to him, the judge of examination shall address himself to the superior of the disobedient witness, which superior in addition to disciplining the witness, of which he shall give immediate notice to the examining judge, shall compel him to appear before the latter and testify.

ART. 430. Witnesses may be cited in person when found.

If the examination of a witness be urgent, he may be cited orally to appear at once, without awaiting the issue of the writ prescribed in article 175, but the reason for the urgency must appear upon the record.

Also, in a similar case, the examining judge may betake himself to the domicile of a witness or to the place where he may be, in order to receive his deposition.

ART. 431. The examining judge may deputize police agents to serve oral or written citations if he considers it advisable.

ART. 432. If the witness should not have a known residence or his whereabouts is unknown, the judge of examination shall issue the proper orders to the police officials, or shall communicate with the proper administrative authority, in order that they may ascertain it and inform him of the result within the period which he may have fixed. Upon the expiration of such period without the whereabouts of the witness having been ascertained, the writ of citation shall be published in the official newspaper of the town of the residence of the judge, and in the absence thereof, in any other newspaper published there.

The writ shall also be inserted, if the judge shall deem it advisable, in the official or private newspapers of the capital of the province and of the place where it is presumed the witness may be, and in the Gazette of the capital of the island.

In such cases a copy of each newspaper in which the citation may have been published shall be attached to the proceedings.

ART. 433. Upon appearing to testify, the witnesses shall deliver to the secretary the copy of the writ of citation.

Witnesses who have reached the age of puberty shall take an oath to state all they may know upon what may be asked them.

The examining judge, before administering an oath to a witness who has reached the age of puberty, and before questioning one who

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has not, shall inform them of their obligation to be truthful and of the penalties with which the code punishes the crime of false testimony in a criminal cause.

ART. 434. The oath shall be taken in the name of God.

The witnesses shall take the oath in accordance with their religion.

ART. 435. The witnesses shall testify separately and secretly in the presence of the examining judge and of the secretary. Should they do so in any other manner, excepting the special cases mentioned in this law, the examining judge shall be disciplined, unless he incurs criminal liability by reason of the offense.

ART. 436. The witness shall first state his name, paternal and maternal surnames, age, conjugal condition, and profession; whether he is or is not acquainted with the accused and other parties; if he is related to them or bears friendship or any other relations to them; if he has been criminally prosecuted and the penalty imposed upon him.

The judge shall permit the witness to narrate without interruption the facts upon which he testifies, and shall only require of him such supplementary explanations as may tend to dissipate obscure or contradictory statements. Thereupon he shall put such questions to him as he may deem proper to elucidate the facts.

ART. 437. Witnesses shall testify *viva voce*, without being permitted to read any written deposition or answer which they may have.

Nevertheless they may consult any note or memorandum containing data difficult to remember.

The witness may dictate his answers in person.

ART. 438. The examining judge may order that the witness be conducted to the place where the acts were committed and be there examined, or that the objects upon which his testimony is to be taken be brought before him.

In the latter case, the examining judge may place before the witness said objects alone or mixed with other similar objects, taking in addition any other measures in his discretion to secure as exact a declaration as possible.

ART. 439. No captious or suggestive questions shall be put to the witness, nor shall coercion, deceit, promises, or artifices of any kind be employed to force or induce him to testify in a specific sense.

ART. 440. If the witness should not understand or speak the Spanish language, an interpreter shall be appointed, who shall take an oath in his presence to conduct himself well and faithfully in the discharge of his duties.

By this means the questions shall be put to the witness and his answers received, which he may dictate through the interpreter.

In such case the deposition must be entered upon the record in the language employed by the witness and translated immediately thereafter into Spanish.

ART. 441. The interpreter shall be selected from among persons having a certificate as such, if there be any in the town. In their absence a teacher of the respective language shall be appointed; and if there be no teacher, any other person acquainted therewith.

If the translation can not be obtained even in this manner and the revelations expected of the witness should be important, the list of questions to be put to him shall be prepared and forwarded to the office of interpretation of languages of the Department of State in

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order that they may be translated before any other work into the language spoken by the witness.

The interrogatory thus translated shall be delivered to the witness in order that in the presence of the judge he may acquaint himself with the contents thereof and prepare the proper answers in writing in his own language, which shall be forwarded in the same manner as the questions to the interpretation of languages.

These steps shall be taken by the judges as promptly as possible.

ART. 442. If the witness be a deaf mute and able to read, the questions shall be put to him in writing. If he is able to write he shall answer in writing. And if he is unable either to read or write, an interpreter shall be appointed through whom the questions shall be put to him and his answers received.

A titular teacher of deaf mutes shall be appointed interpreter if there be any in the town, and in the absence of such anyone able to communicate with the witness.

The person appointed shall take an oath in the presence of the deaf mute before entering upon the discharge of his duties.

ART. 443. The witness may read the record of his deposition in person; should he not be able to do so on account of being included in any of the cases mentioned in articles 440 and 442, the interpreter shall read it to him or the secretary in other cases.

The judge shall always inform the persons interested of their right to read their depositions themselves.

ART. 444. Such depositions shall be signed by the judge and by all those who may have taken part therein, should they be able to do so, being authenticated by the secretary.

ART. 445. The depositions of witnesses who, in the opinion of the judge, should be manifestly irrelevant to establish the acts which are the subject-matter of the *sumario*, shall not be made a matter of record. Nor shall similar statements of a witness be embodied in each deposition, but all that may serve for the prosecution or for the defense must always be included.

In the first case an entry shall be made upon the record of the appearance of the witness and of the reason for not writing his deposition.

ART. 446. Upon the conclusion of the testimony of the witness, the judge of examination shall inform him of his obligation to appear to testify again before the court of competent jurisdiction when cited therefor, as well as of his duty to inform said examining judge of the change of residence he may make until he is cited for the oral trial, with the admonition that his failure to do so will be punished with a fine of not less than 12.50 or more than 125 pesetas, unless he should incur criminal liability by reason thereof.

These admonitions shall be entered at the foot of the record of the deposition.

ART. 447. The judge of examination, in transmitting the *sumario* to the court of competent jurisdiction, shall inform the same of the changes of domicile which the witnesses may have communicated.

The same shall be done with regard to those who inform him of such changes after the transmission of the *sumario* until the cause is terminated.

ART. 448. If the witness should state, when given the admonition referred to in article 446, that it will be impossible for him to appear

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on account of being obliged to absent himself from the island and also in case there should be a cause reasonably sufficient to fear his death or physical or intellectual disability before the beginning of the oral trial, the examining judge shall instruct the accused to appoint an attorney within the period of twenty-four hours, should he not yet have one, and that otherwise one will be assigned to him *ex officio* to counsel him at once to have the testimony of the witness taken. Upon the expiration of this term the judge shall administer the oath and shall again examine the latter in the presence of the accused and his counsel, and also in that of the public prosecutor and of the complainant, should they desire to attend the proceeding, the latter being permitted to ask as many questions as they may deem advisable, excepting such as the judge may reject as manifestly impertinent.

The answers to these questions shall be entered upon the record, which shall be signed by all present.

ART. 449. In case of the imminent danger of the death of the witness, his deposition shall be taken as speedily as possible, in the manner mentioned in the foregoing article, even though the accused should not have the assistance of an attorney.

ART. 450. No erasures, corrections, or interlineations shall be made in the proceedings of the *sumario*. At the end thereof the errors which may have been committed shall be recorded.

CHAPTER VI.—*Confrontation between the witnesses and the accused.*

ART. 451. When the witnesses or the accused disagree among themselves, or the former with the latter, as to some fact or some circumstance of moment in the *sumario*, the judge may cause those disagreeing to confront each other; but this proceeding, as a general rule, must take place only between two persons at the same time.

ART. 452. The confrontation shall take place before the judge, the secretary reading to the accused or witnesses between whom the proceeding is to be held the depositions they may have made, and asking the witnesses, after reminding them of their oath and the penalties for false testimony, whether they ratify the same or desire to make some change.

The judge shall thereupon state the contradictions which appear from said depositions, and shall request those confronting each other to come to an agreement.

ART. 453. The secretary shall certify to all that takes place at the confrontation and to the questions, answers, and reconventions which the persons confronting each other may make, as well as to what he may observe in their conduct during the proceeding, and shall sign said certification together with all those present, stating, if any should not sign, the reason alleged therefor.

ART. 454. The judge shall not permit the persons confronting each other to insult or threaten each other.

ART. 455. No confrontation shall take place unless no other means to verify the existence of the crime or the guilt of any of the accused is known.[a]

[a] If there be data sufficient, in the opinion of the sentencing court and from what really appears from the cause, to prove the guilt of the accused, the court, in refusing to hold the confrontation, has not incurred the breach of form mention in No. 1 of article 911. (*Decision of February 16, 1884.*)

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CHAPTER VII.—*Expert evidence.*

ART. 456. The judge shall call for an expert opinion if, to ascertain or weigh some important fact or circumstance in the *sumario*, scientific or artistic knowledge should be necessary or advisable.

ART. 457. The experts may or may not be titular.

Titular experts are those who have an official diploma in some science or art the exercise of which is governed by the administration.

Nontitular experts are those who, not possessing an official diploma, have nevertheless some special knowledge or practice in some science or art.

ART. 458. The judge shall avail himself of the services of titular experts in preference to those who are not such.

ART. 459. Every expert investigation shall be made by two experts.

The case is excepted where there is only one expert in the place and it should not be possible to await the arrival of another one without serious damage to the progress of the *sumario*.

ART. 460. The appointment shall be communicated to the experts officially in writing, which document shall be delivered to them by a bailiff or porter of the court with the formalities prescribed for the citation of witnesses, the original writ for the purposes of article 175 being substituted by an attested statement which the bailiff or porter entrusted with the service shall draft.

ART. 461. If the urgency of the case shall so require, the call may be made verbally by order of the judge, such fact appearing in the proceedings, but the attested statement prescribed by the foregoing article must always be made by the person entrusted with the service of the summons.

ART. 462. No one can refuse to answer the call of a judge to fulfill an expert service, unless legitimately prevented from so doing.

In such case he must inform the judge thereof upon receiving his appointment, in order that the proper action may be taken.

ART. 463. An expert who, without giving a good excuse, shall fail to answer the call of the judge or refuse to give his opinion, shall incur the liabilities prescribed for witnesses by article 420.

ART. 464. No expert opinion as to the crime, whosoever be the person injured, can be given by those who, according to article 416, are not obliged to testify as witnesses.

An expert who, being included in any of the cases of said article, should express an opinion without previously informing the judge who may have appointed him of this circumstance, shall incur a fine of not less than 12.50 or more than 125 pesetas, unless the act should give rise to criminal liability.

ART. 465. Persons who shall make a report as experts by virtue of a judicial order shall be entitled to claim the fees or indemnity which may be just, provided they do not receive as such experts a fixed compensation paid by the State, the province, or the municipality.

ART. 466. After the appointment of experts has been made, the private plaintiff, should there be any, as well as the accused, if he should be under the control of the judge or at the place where the investigation is being held, or his representative, should he have any, shall be notified of such appointment.

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ART. 467. If the expert examination and opinion could take place again during the oral action, the experts appointed can not be challenged by the parties.

If it can not take place again during the oral action, a challenge may be interposed.

ART. 468. The following are causes for challenge of experts:

1. Relationship by consanguinity or affinity within the fourth degree with the complainant or the accused.

2. A direct or indirect interest in the cause or in another similar one.

3. Intimate friendship or manifest enmity.

ART. 469. The plaintiff or accused who should desire to challenge the expert or experts appointed by the judge, must interpose it in writing before the beginning of the expert investigation, stating the cause of challenge and the evidence of witnesses which he offers and accompanying the documentary evidence or stating the place where the latter may be found if not at his disposal.

He shall not be required to avail himself of the services of a solicitor to interpose such challenge.

ART. 470. The judge, without taking any action, shall examine the documents which the challenging party may produce, and shall hear the witnesses he may present at once, deciding thereupon what he may consider just with regard to the challenge.

If the challenge be sustained, he shall suspend the expert investigation such time as may be strictly necessary to appoint an expert to take the place of the one challenged, to inform him thereof, and to establish the person appointed in the proper place.

Should he overrule the challenge the proceedings shall be continued as if no challenge had been interposed.

If the challenging party should not produce the documents, but should designate the archives or place where they may be found, the judge of examination shall call for them and shall examine them as soon as received, without thereby staying the course of the proceedings, and if the cause of challenge should appear justified therefrom, he shall annul the expert opinion which may have been rendered, ordering that this proceeding take place *de novo*.

ART. 471. In the case of the second paragraph of article 467, the complainant shall have the right to appoint an expert at his own cost to make the expert examination.

The accused shall have the same right.

Should there be more than one complainant or person accused, they shall come to an agreement among themselves, respectively, in making the appointment.

These experts must be titular, unless there should be none of this class in the judicial district or circuit, in which case experts without a certificate may be appointed.

If the holding of the expert examination should not admit of delay, the proceedings shall be had as the conditions may permit in order that the plaintiff and the accused may take part therein.

ART. 472. If the parties should avail themselves of the privilege granted them by the foregoing article, they shall indicate to the judge the name of the expert, and shall submit, upon making this designation, evidence of the person appointed being such expert.

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In no case shall they be permitted to avail themselves of this privilege after the investigation has begun.

ART. 473. The judge shall pass upon the admission of said experts in the manner prescribed in article 470 for challenges.

ART. 474. Before beginning the expert proceedings, all the experts, those appointed by the judge as well as those appointed by the parties, shall take an oath in accordance with article 434 to well and faithfully perform their duty and for no other purpose than to establish and declare the truth.

ART. 475. The judge shall, in a clear and specific manner, indicate to the experts the subject of their report.

ART. 476. In the case of the second paragraph of article 467, the complainant, if there be any, together with his counsel, and the accused with his counsel, even though imprisoned, in which case the proper precautions shall be taken, may attend the expert examination.

ART. 477. The expert proceedings shall be presided over by the examining judge or, by virtue of his delegation, by the municipal judge. He may also delegate his duties to an official of the judicial police in the case of article 353.

The secretary acting in the cause must always be present.

ART. 478. The expert report shall include, if possible—

1. A description of the person or thing the subject-matter thereof in the state or manner in which it may be found.

The secretary shall write this description, which shall be dictated by the experts and signed by all persons present.

2. A detailed statement of all the steps taken by the experts, and of the result thereof, made and authenticated in the same manner as the former.

3. The findings of the experts, in view of such data, in accordance with the principles and rules of their science or art.

ART. 479. If the experts should find it necessary to destroy or alter the objects which they may analyze, a portion thereof must be retained in the possession of the judge if possible, in order that a new analysis may be made if necessary.

ART. 480. The parties attending the operations or examinations may make such remarks to the experts as they may deem advisable, all of them being recorded in the proceedings.

ART. 481. After the examination, the experts may, should they request it, retire as long as necessary to the place which the judge may fix for deliberation and the preparation of their findings.

ART. 482. If the experts should require a rest, the judge or the official representing him may grant therefor the time necessary.

He may also postpone the proceedings to another hour or day when the nature thereof so requires.

In such case, the judge or person representing him shall take the precautions advisable in order to prevent any alteration in the matter of the expert examination.

ART. 483. The judge may, on his own initiative, or at the request of the parties present, or of their counsel, put such questions to the experts, when they submit their findings, as he may consider pertinent, and demand the necessary explanations.

The answers of the experts shall be considered as a portion of their report.

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ART. 484. If the experts should not agree and their number be even, the judge shall appoint another expert.

With the assistance of the last expert appointed, the work done by the first experts shall be repeated, if possible, and such other work shall be performed which may appear proper.

If the repetition of the work or new operations should not be possible, the intervention of the expert last appointed shall be limited to deliberating with the rest, in view of the investigation made, and afterwards preparing his findings with the reasons therefor together with whomsoever agrees with him, or separately, should he not agree with any of them.

ART. 485. The judge shall furnish the experts the material means necesary to make the examination entrusted to them, demanding the same of the public administration or addressing to the proper authorities a notice in advance should they already be prepared for such purpose, reserving the special provisions of article 362.

TITLE VI.—THE CITATION, THE DETENTION, AND THE PROVISIONAL IMPRISONMENT.[a]

CHAPTER FIRST.—*The citation.*

ART. 486. A person charged with a punishable act must be cited only for the purpose of being heard, unless the law shall provide otherwise or unless his immediate detention should be proper.[b]

ART. 487. If the person cited in accordance with the provisions of the foregoing article should not appear nor give any good cause which prevents him from so doing, the order of appearance may be changed into an order of arrest.

ART. 488. During the progress of the cause the examining judge may order the appearance of as many persons as it may be advisable to hear on account of there being some apparent indications of guilt against them.

CHAPTER II.—*The detention.*

ART. 489. No Spaniard or foreigner can be arrested, excepting in the manner and in the cases prescribed by law.[c]

ART. 490. Any person may place under arrest—

1. He who shall attempt to commit a crime, at the moment he is about to commit it.

2. A delinquent captured *in fragranti.*

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[a] See G. O. No. 228, Hdqrs. Dept. P. R., Dec. 23, 1899.

[b] Persons who are cited and heard in accordance with this article are not required to take an oath; it is sufficient that they testify under a promise to tell the truth, as they are not examined as witnesses, but as possible participants in the criminal act. (*Statement of the fiscal of the Supreme Court of September 15, 1883, No. 20.*)

[c] This repeats the precept of article 4 of the Constitution in force.

According to the said article every person detained shall be set at liberty or turned over to the judicial authorities within twenty-four hours after the detention, and every detention shall be annulled or changed to imprisonment within seventy-two hours after the person detained has been turned over to the judge of competent jurisdiction, the warrant which may issue being communicated to the person interested within the same period.

A citation of the violation of articles 489, 282, and 287 as of mere form or procedure is inefficacious for an appeal for annulment of judgment for violation of law. (*Decision of March 29, 1887.*)

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3. He who shall escape from a penal institution in which he may be serving a sentence.

4. He who shall escape from a prison in which he may be awaiting his transfer to a penal institution or place in which he is to serve the sentence which may have been imposed upon him by a final sentence.

5. He who shall escape while being conducted to the institution or place mentioned in the foregoing number.

6. He who shall escape while under arrest or detention awaiting trial.

7. A person accused or convicted who may be in default.

ART. 491. A private individual detaining another person shall state, if the latter so requires, that he has acted by virtue of reasons reasonably sufficient to believe that the person detained was included in any of the cases mentioned in the foregoing article.

ART. 492. An authority or agent of the judicial police shall be obliged to place under arrest—

1. Any person included in any of the cases of article 490.

2. Any person accused of a crime to which the code affixes a penalty higher than that of *prisión correccional.*

3. A person accused of a crime to which a lower penalty is affixed, if his antecedents or the circumstances of the act should raise a presumption that he will not appear when called upon by the judicial authorities.

From the provisions of the foregoing paragraph is excepted the accused who at once furnishes bail sufficient, in the judgment of the authority or agent who desires to place him under arrest, to allow a reasonable presumption that he will appear when called upon by the judge or court of competent jurisdiction.

4. A person included in the provisions of the foregoing subdivision, although not yet undergoing trial, provided that the two conditions following are attendant: 1. That the authority or agent should have reasonable cause to believe the existence of an act presenting the characteristics of a crime. 2. That he shall also have sufficient cause to believe that the person he desires to arrest participated therein.

ART. 493. The authority or agent of the judicial police shall record the name, surname, domicile, and other circumstances which may be sufficient for the verification and identification of the person of the accused or of the delinquent not detained on account of not being included in any of the cases of the foregoing article.

This record shall be delivered at the proper time to the judge or court taking cognizance or which is to take cognizance of the cause.

ART. 494. Said judge or court shall also order the arrest of those included in the provisions of article 492, upon the suggestion of the authorities and agents of the judicial police.

ART. 495. No person can be detained by reason of simple misdemeanors unless the presumed criminal should not have a known domicile or not give sufficient bond in the judgment of the authority or agent intending to detain him.

ART. 496. A private individual, authority or agent of the judicial police who shall detain a person by virtue of the provisions of the foregoing articles must set him at liberty or deliver him to the judge nearest to the place where the arrest was made within 24 hours thereafter.

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Should he delay the delivery, he shall incur the liability established by the penal code, if the delay shall have exceeded 24 hours.[a]

ART. 497. If the judge or court to whom the delivery is made should be the judge who is competent to take cognizance of the cause, and the arrest shall have been made according to the provisions of Nos. 1, 2, and 6, and the case relating to the accused of number 7 of article 490, and 2, 3, and 4 of article 492, he shall raise the detention to imprisonment or shall annul the same within 72 hours from the date of the delivery of the person detained.

The same shall be done within a similar period by the judge or court with regard to the person whose detention he himself may have ordered.

ART. 498. If the person detained by virtue of the provisions of number 6, and the first case of 7 of article 490, and 2 and 3 of article 492, shall have been delivered to a judge other than the judge or court taking cognizance of the cause, the former shall prepare a memorandum of the person making the detention, of his domicile, and other circumstances sufficient to seek and identify the same, of the reasons the latter may have alleged for making the detention, and of the name, surname, and circumstances of the person detained.

This memorandum shall be signed by the judge, the secretary, the person making the detention, and the other persons present. Two witnesses shall sign in the place of any one not doing so.

Immediately thereupon these memoranda and the person detained shall be placed at the disposal of the judge or court taking cognizance of the cause.

ART. 499. If the person detained should be so by reason of being included in the provisions of numbers 1 and 2 of article 490 and number 4 of article 492, the judge of examination to whom he may be delivered shall take the first steps and shall raise the detention to imprisonment, or shall decree that the person detained be set at liberty, as may be proper, within the period fixed in article 497.

Hereupon, if said judge should not have jurisdiction, he shall forward to the competent judge the memoranda and the person of the prisoner, if there be any.

ART. 500. When the person detained is so by virtue of the third, fourth, and fifth causes, and the case relating to the condemned of the seventh cause of article 490, the judge to whom he may be delivered, or who shall have decreed the detention, shall order that he be transferred immediately to the institution or place where he is to serve his sentence.

ART. 501. The public prosecutor, the private complainant, if there be any, and the accused shall be informed of the writ raising the detention to imprisonment or annulling the same, the latter being furthermore informed of his right to request a rehearing, orally or in writing, the statements he may make being embodied in the notice.

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[a] A public official who shall detain a person and shall not turn him over to the judicial authorities within twenty-four hours incurs the liability prescribed in article 200 of the penal code. Article 502 specifies the punishment applicable to a person who shall arrest a person in order to turn him over to the authorities outside of the cases permitted by law. (*See Appendix II.*)

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CHAPTER III.—*Provisional imprisonment.*[a]

ART. 502. While the cause is at the stage of the *sumario*, provisional imprisonment can be decreed only by the judge of examination or the one conducting the first steps, or the person who by virtue of a commission or temporarily exercises the functions of the former.

ART. 503. In order to decree the provisional imprisonment, the following circumstances shall be necessary:

1. That the existence of an act presenting the characteristics of a crime is established in the cause.

2. That a penalty higher than *prisión correccional* be affixed thereto according to the general scale embraced in the penal code, or that even though a lower penalty be affixed thereto the judge shall consider provisional imprisonment necessary, in view of the circumstances of the act and the antecedents of the accused, until he shall give the bond which he may require.

3. That there shall appear in the case motives sufficient to believe that the person against whom the writ of imprisonment is to issue is criminally liable for the crime.

ART. 504. Provisional imprisonment shall also be proper when the first and third circumstances of the foregoing article are attendant and the accused shall not have appeared without legitimate cause at the first call of the judge or court taking cognizance of the cause.

Notwithstanding the provisions of the foregoing article, even though a penalty higher than *prisión correccional* be affixed to the crime, when the accused shall have good antecedents or there shall be good reasons to believe that he will not atempt to evade justice, and when furthermore the crime shall not have produced alarm nor be of those which are frequently committed within the territory of the respective province, the judge or court may order that the accused be released on bail.

ART. 505. To carry out the order of imprisonment two mandates shall be issued, one addressed to the bailiff of the court or porter of the tribunal or to the official of the judicial police who is to execute the same, and another to the warden of the prison which is to receive the prisoner.

The mandate shall contain the order of imprisonment in full; the name, surname, birthplace, age, conjugal condition, and domicile of the accused, if known; the crime which gave rise to the proceeding; if the proceedings are *ex officio* or at the instance of a party, and if the imprisonment is to be ordinary or *incomunicado*.

The wardens of the prisons shall receive no person as a prisoner unless an order of imprisonment be delivered to them.

ART. 506. The incommunication of the persons detained or imprisoned can last only the period absolutely necessary to serve the citations made in the investigations of the crime which may have given rise to the proceedings, and must, as a general rule, not exceed five days.

The *incomunicado* person may, with the proper precautions, attend the expert proceedings, which this law allows him to attend, when his presence shall not defeat the object of the incommunication.

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[a] See G. O. No. 228, Hdqrs. Dept. P. R., Dec. 23, 1899.

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ART. 507. If the citations shall have to be served outside of the territory of the island or at a great distance, the incommunication may continue the period reasonably necessary to prevent confabulation.

ART. 508. The judge or court taking cognizance of the cause may order, under his liability, that a prisoner be again placed *incomunicado*, even after it has been raised, if good reasons should appear in the cause; but the second incommunication can never exceed three days, reserving the provisions of the foregoing article.

The accused shall be informed of the reasons stated in the writ which orders the second incommunication.

ART. 509. An *incomunicado* prisoner shall be allowed the books and effects which he may procure himself, should there be no objection in the judgment of the examining judge.

ART. 510. The examining judge may also permit that the *incomunicado* prisoner, should he request it, be furnished writing material, if in his judgment this permission shall not offer objection; but in the order granting such permission he shall take the proper measures to prevent that the effects of the incommunication be defeated.

ART. 511. An *incomunicado* prisoner can not deliver nor receive any letter or paper whatsoever, except through and with the permission of the examining judge, who shall examine the contents thereof in order to allow or refuse its delivery.

ART. 512. If the presumed criminal be not found at his residence and his whereabouts be unknown, a requisition shall be directed to the judges of examination within whose jurisdiction there is reason to suspect that he may be found; and in any case said requisition shall be published in the Gazette of the capital of the island and in a newspaper of the locality or of the capital of the proper province, authenticated copies being also affixed, in the form of edicts, in the court or tribunal taking cognizance of the cause and in that of the judges of examination to whom the requisition may have been directed.

ART. 513. In the requisition shall be stated the name and surname, office, profession or trade, if known, of the accused person in default, and the marks by which he can be identified, the crime for which he is prosecuted, the territory where it is presumed that he may be found, and the prison to which he is to be taken.

ART. 514. The original requisition and a copy of each newspaper in which it may have been published shall be attached to the cause.

ART. 515. The judge or court ordering the imprisonment of an accused person in default, and the judges of examination to whom the requisitions may be sent, shall inform the authorities and agents of the judicial police of their respective territories of the circumstances mentioned in article 513.

ART. 516. The decree shall be ratified in every case and shall be returned, after the presumed criminal has been heard, within seventy-two hours after the arrest.

ART. 517. Notice of the order ratifying the decree of imprisonment and that ordering the release of the imprisoned person shall be served upon the same persons as those upon whom notice of the decree of imprisonment was served.

An appeal lies from such decrees.

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Immediately after being issued, and within the same period of seventy-two hours, the proper mandate shall be issued to the warden of the prison in which the prisoner may be, in the manner prescribed in article 505.

ART. 518. Decisions decreeing or refusing to order the imprisonment or release may be appealed from for a review of the proceedings only.

The proceedings shall be adjusted to the provisions of Title X of the first book of this law.

ART. 519. All proceedings relating to provisional imprisonment shall be conducted in a separate record.

CHAPTER IV.—*Treatment of persons detained or imprisoned.*

ART. 520. The detention, as well as the provisional imprisonment, must be effected in the manner and form which shall least injure the person and reputation of the person accused.

His liberty must not be restricted except within the limits absolutely indispensable to secure his person and prevent communications which may be of prejudice to the cause.

ART. 521. Persons detained shall, in so far as possible, be kept separated from each other.

If such separation should not be possible, the judge of examination or court shall seek to prevent that persons of different sexes or co-criminals be placed in the same prison, and that young persons and those who are not recidivists be kept separated from those of more mature age and recidivists.

In making this separation the degree of education of the person detained, his age, and the character of the crime charged against him shall be taken into consideration.

ART. 522. Every person detained or imprisoned may at his own expense procure the commodities and occupations compatible with the object of his detention and with the prison regulations, provided that they do not affect his security or the secrecy of the *sumario*.

ART. 523. When the person detained or imprisoned should desire to be visited by a minister of his religion, by a physician, by his relatives or persons with whom he has joint interests, or by persons who may give him advice, he must be allowed to receive such visits under the conditions prescribed by the prison regulations, should they not affect the secrecy and success of the *sumario*. Consultations with his counsel can not be forbidden him while he is not *incomunicado*.

ART. 524. The examining judge shall authorize, in so far as not prejudicial to the success of the investigation, the means of correspondence and communication of which the person detained or prisoner may avail himself.

But in no case can persons detained or imprisoned be prevented from writing to the superior officials of the judiciary.

ART. 525. No extraordinary measures of safety shall be taken against the person detained or imprisoned, except in case of disobedience, violence, or mutiny, or when he shall have attempted or made preparations to escape.

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Such measures must be temporary, and shall only continue such time as may be strictly necessary.

ART. 526. The examining judge shall visit the prisons of the locality once a week without previous notice nor on a determined day, accompanied by a member of the department of public prosecution, who may be the municipal *fiscal* delegated for such purpose by the *fiscal* of the respective audiencia; and where such tribunal is established, the visit shall be made by the presiding judge of the same or of the criminal chamber and one associate justice, with one member of the department of public prosecution and with the attendance of the examining judge.

During their visit they shall take cognizance of all that concerns the condition of the prisoners or persons detained, and shall take the measures within their power to correct any abuses they may notice.

ART. 527. Detained or imprisoned persons, while *incomunicado*, can not enjoy the privileges mentioned in this chapter, and shall be governed by the provisions contained in the foregoing chapter.

TITLE VII.—TEMPORARY LIBERTY OF THE ACCUSED.

ART. 528. Provisional imprisonment shall continue only such time as the causes which gave rise thereto may subsist.

The person detained or imprisoned shall be set at liberty at any stage of the cause when his innocence is established.

All the authorities taking part in a proceeding shall be obliged to make the detention or provisional imprisonment of accused persons as short as possible.

ART. 529. If the accused be charged with a crime to which is affixed a penalty lower than *prisión correccional*, according to the general scale of the penal code, and on the other hand should not be included in the provisions of subdivision 3 of article 492 or in the first paragraph of article 504 of this law, the judge or court taking cognizance of the cause shall decree whether the accused is or is not to be granted the benefit of bail.

In the same decree fixing the bail, the judge shall determine the amount as well as the character thereof.

This decree shall be communicated to the public prosecutor and notice shall be served upon the private complainant and the accused, and it may be appealed for a review of the proceedings only.

ART. 530. A person accused who is to enjoy temporary liberty, with or without bail, shall constitute *apud acta* an obligation to appear on the day which may be set in the respective decree and furthermore as often as he might be called before the judge or court taking cognizance of the cause.

ART. 531. In order to determine the amount and character of the bail, the nature of the crime, the social status and the antecedents of the accused shall be taken into consideration, as well as all other circumstances which may bear upon the greater or lesser interest of the latter to place himself beyond the jurisdiction of the judicial authority.

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ART. 532. The purpose of the bail shall be to answer for the appearance of the accused when called by the judge or court taking cognizance of the cause. The amount thereof shall serve to satisfy the costs incurred in the separate record required thereby, and the balance shall be adjudicated to the State.

ART. 533. The provisions of articles 591 to 596, inclusive, of Title IX of this book, relating to the character, manner of constituting, admitting, and classifying, as well as substituting bonds, its applicable to bonds offered to obtain the temporary liberty of an accused person.

ART. 534. If the accused should not appear at the first judicial call or should not give a good reason preventing him from so doing, a period of ten days shall be allowed the personal bondsman, or the owner of the property of whatsoever kind given in bond, within which to produce the person in default.

ART. 535. If the personal bondsman or the owner of the property constituting the bond should not produce the person in default within the period fixed, the bail shall be forfeited and it shall be adjudicated to the State and turned over to the nearest revenue collector, deducting the costs mentioned at the end of article 532.

ART. 536. In order to recover upon any bond compulsory process shall be employed.

If a personal bond should be involved, judicial proceedings shall also be brought against the property of the bondsman to the extent necessary to recover the amount which may have been fixed upon the admission of the said bond.

Public securities, stock, and obligations of railroads and public works and other similar commercial or industrial securities shall be disposed of through an exchange broker or an agent in his absence. Should there be none in the place of the cause, they shall be forwarded for disposal to the judge or court of the nearest place where there may be one.

Other personal property given in pledge, as well as mortgaged real property, shall be sold at public sale after being appraised.

ART. 537. If the property constituting the bond should belong to the accused, it shall be sold and the proceeds adjudicated to the State if the person accused fails to appear upon the judicial call or does not justify his inability to do so.

ART. 538. In all proceedings involving the alienation of property constituting bonds and of the delivery of the proceeds into the administrations of the public treasury, the department of public prosecution shall intervene.

The *fiscal* of the audiencia may delegate his intervention to the municipal *fiscal* at the place where the judge of examination may be, or demand that the record of the proceedings be forwarded to him when concluded, seeking in so far as possible to embody his desires in one and the same order.

ART. 539. Decrees of imprisonment and temporary liberty and bonds may be changed at the instance of the court or of a party at any stage of the cause.

Consequently the accused may be imprisoned and placed at liberty as often as required, and his bail may be increased or reduced in so far as may be necessary to assure the consequences of the action.

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ART. 540. If the person accused does not present or increase the bond within the period allowed him, he shall be committed to prison.

ART. 541. The bond shall be canceled—

1. Upon the request of the bondsman upon the surrender of the accused.

2. When the latter is committed to prison.

3. When a final decree of dismissal or a final sentence of acquittal is rendered, or in case of conviction, if the criminal should appear to serve his sentence.

4. By the death of the accused during the pendency of the cause.

ART. 542. If a final condemnatory sentence should have issued, and the accused should not appear at the first call or should not establish his inability to do so, the bond shall be forfeited to the State in the manner prescribed in article 535.

ART. 543. After the bond has been forfeited, the bondsman shall have no right of action for the return thereof, but he shall reserve his right of action for indemnity against the person accused or his successors in right.

ART. 544. Proceedings upon imprisonment and temporary liberty and bond shall be had in a separate record.

TITLE VIII.—ENTRY AND SEARCH OF CLOSED PLACES, OF BOOKS AND PAPERS, AND THE DETENTION AND OPENING OF WRITTEN AND TELEGRAPHIC CORRESPONDENCE.

ART. 545. No one can enter the domicile of a Spaniard or foreigner residing in Spain without his consent, excepting in the cases and in the manner expressly provided for by law.

ART. 546. The judge or court taking cognizance of the cause may order an entry and search, by day or night, of any public buildings and places, whatever be the district in which situated, if there are indications that the accused or the effects or instruments of the crime, or books, papers, or other objects which may serve in the discovery and verification thereof are to be found there.

ART. 547. The following shall be considered public buildings or places for the observance of the provisions of this chapter:

1. Those destined to any official, military, or civil service of the State, province, or municipality, even though the persons entrusted with said service or the persons in charge of the care and custody of the building or place reside in the same.

2. Those destined to any establishment for meetings or recreation, licit or otherwise.

3. Any other closed buildings or places which do not constitute the residence of a private individual in accordance with the provisions of article 554.

4. The vessels of the State.

ART. 548. The judge shall require for the entry and search of the palace of any of the Colegislative Bodies the authority of the respective president.

ART. 549. For the purpose of entering and searching temples and other religious places, a respectful communication to the persons in charge thereof shall be sufficient.

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ART. 550. The examining judge may also, in the cases indicated in article 546, order the entry and search, by day or night, if the urgency of the case should so require, of any building or closed place or part thereof which may constitute the residence of any Spaniard or foreigner residing in Spain; but always after the consent of the person interested has been obtained as provided by article 6 of the Constitution, or in the absence of consent by virtue of an order setting forth the reasons for the action, which shall be served upon the person interested at once or not later than 24 hours after its issue.[a]

ART. 551. It shall be understood that a person gives his consent who, upon being requested by the person who is to make the entry and search to allow the same, performs on his part the acts necessary depending upon him for such entry and search to take place, without invoking the inviolability which article 6 of the Constitution of the State recognizes in a domicile.

ART. 552. Useless inspections shall be avoided in making the searches, it being sought not to prejudice nor importune the person interested more than necessary, and all precautions possible shall be taken not to compromise his reputation, his secrets being respected, should they not interest the investigation.

ART. 553. Police agents may also proceed upon their own responsibility in making the search of some inhabited place when a warrant of arrest has been issued against a person and they are attempting to capture him, when an individual is surprised at a flagrant crime, or when a delinquent being immediately pursued by the authorities shall conceal himself or take refuge in some house.

ART. 554. For the purposes of the foregoing article the following are considered domiciles:

1. The royal palaces, whether or not inhabited by the Monarch at the time of the entry or search.

2. A building or closed place, or that portion thereof destined principally to the dwelling of any Spaniard or foreigner residing in Spain and of his family.

3. National merchant vessels.

ART. 555. In order to search the palace in which the Monarch is residing the royal judge shall request permission through the chief major domo of His Majesty.

ART. 556. In reservations where the Monarch may not be at the time of the search the permission of the chief or employee of the service of His Majesty in charge of the custody of the building or the person acting in his stead, if the former be absent, shall be necessary.

ART. 557. Taverns, eating houses, restaurants, and saloons shall not be considered the domicile of those who may be there or reside in the same accidentally or temporarily, but shall be considered the domicile only of the tavern, restaurant, or saloon keepers in charge thereof and who dwell there with their families with regard to that part of the building set aside for such purpose.

ART. 558. The warrant for the entry and search of the domicile of a private party shall always set forth the reasons therefor, and the

[a] The provisions of articles 566, 567, and 568 must be borne in mind in order to properly understand and apply this article.

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judge shall state therein concisely the building or closed space to be entered and searched, whether it is to take place in the daytime only, and the authority or official to perform the service.

ART. 559. For the entry and search of buildings used for the residence or office of the representatives of foreign nations accredited to the Government of Spain, the judge shall ask their consent in a rspectful communication, in which he shall request them to reply within the period of twelve hours.

ART. 560. If such period should expire without any answer being made, or if the foreign representative should refuse his consent, the judge shall at once communicate such refusal to the Colonial Minister by telegraph, if there be any. Until the Minister communicates his decision, he shall abstain from entering and searching the building, but he shall take the measures of surveillance referred to in article 567.

ART. 561. Nor can he enter and search foreign merchant vessels without the authority of the captain, or, if the latter should refuse it, without that of the consul of his nation.

In the case of foreign men-of-war, the lack of authorization of the commander shall be supplied by that of the ambassador or minister of the nation to which they may belong.

ART. 562. The dwellings and offices of foreign consuls may be entered, a respectful communication being first sent them, and the formalities prescribed by the constitution of the State and by the laws being observed.

ART. 563. If the building or closed place should be situated within the district of the examining judge, he may entrust the entry and search to the municipal judge of the territory in which the building or closed place may be situated, or to any authority or agent of the judicial police. If a municipal judge ordered it, he may also entrust said entry and search to said authorities or agents of the judicial police.

If the building or closed place be situated outside the jurisdiction of the judge, the latter shall entrust the commission to the judge of the same category in the territory in which it may be situate, who in his turn may entrust the proceedings to the authorities or agents of the judicial police.

ART. 564. If a building or public place included in numbers 1 and 3 of article 547 should be in question, the judge shall communicate in writing with the authority or chief in charge thereof in the same town.

If the latter should not reply within the period fixed in the communication, the decree ordering the entry and search shall be communicated to the person entrusted with the care or custody of the building or place to be entered and searched.

If vessels of the State should be in question, the communications shall be addressed to the proper commanders.

ART. 565. If the building or place be of those included in number 2 of article 547, the notice shall be served upon the person at the head of the meeting or recreation establishment, or to the person acting in his place, should the former be absent.

ART. 566. If the entry and search should have to be made in the residence of a private person, the order shall be communicated to the

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latter; and should he not be found at the first call, it shall be delivered to his representative.

If his representative should not be found, the notice shall be served upon any other person of legal age who may be found at the residence, preference being given to the members of the family of the person interested.

If no one be found, a record of this fact shall be made, which shall be prepared in the presence of two neighbors, who must affix their signatures thereto.

ART. 567. As soon as a judge orders the entry and search of any building or closed place he shall take such measures of surveillance as may be necessary to prevent the flight of the accused or the removal of the instruments, effects of the crime, or books, papers, or any other things which are to be the subject of the search.

ART. 568. After the steps established in the foregoing articles have been taken, the entry and search shall be proceeded with, recourse being had to force if necessary.

ART. 569. The search shall be made in the presence of the person interested or of the person legally representing him.

If the former be not found or should not desire to be present or appoint a representative, the search shall be conducted in the presence of a member of his family of legal age.

Should there be no such member it shall be conducted in the presence of two witnesses, residents of the same town.

The search shall always be made in the presence of the secretary and of two witnesses, without counting those referred to in the foregoing paragraph, a record being made which shall be signed by all persons present.

The attendance at the search of the person interested, of his representative, of the members of his family, and of the witnesses shall produce the liability declared in the penal code upon those guilty of serious disobedience to the authorities, without prejudice to the proceedings being held.

If the persons or objects sought for can not be found, and no suspicious indications shall appear, a certified transcript of the record shall be issued to the party interested, upon his request.

ART. 570. If a search be made of the domicile of a private individual and the day shall close without its being concluded, the person conducting the same shall request the person interested or his representative, if present, to permit the continuation thereof during the night. Should he object the proceedings shall be suspended, reserving the provisions of articles 546 and 550, closing and sealing the room or furniture where it is to be continued, whenever this precaution is considered necessary to prevent the flight of the person or the removal of the things sought for.

The person making the search shall also warn the persons in the building or place where the search is being made not to remove the seals or break the locks, nor permit other persons to do so, under the liability established in the penal code.

ART. 571. The search shall be suspended only the time during which it may not be possible to continue the same, and during the suspension the measures of surveillance referred to in article 567 shall be taken.

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ART. 572. In the record of the entry and search of a closed place shall be stated the names of the judge, or of his delegates, conducting the same, and of the other persons taking part therein, the incidents which may have occurred, the hour the search was begun and concluded, and a detailed statement of the search in the order in which it was made, as well as of the results obtained.

ART. 573. The search of books and papers of accounts of the accused or of any other person shall not be ordered, except when there are serious indications that such search would result in the discovery or verification of some fact or circumstance of importance in the cause.

ART. 574. The judge shall collect the instruments and effects of the crime, and may also take the books, papers, or any other things which may have been found, if this should be necessary for the purposes of the *sumario*.

The books and papers taken shall be foliod, stamped, and rubricated upon every sheet by the judge, by the secretary, by the person interested or the party acting in his stead, and by the other persons who may have attended the search.

ART. 575. All are obliged to exhibit the objects and papers which it is suspected may bear upon the cause.

If the person retaining the same should refuse to exhibit them he shall be corrected by the imposition of a fine of from 62.50 to 250 pesetas, and if he shall insist in his refusal, if the object or papers should be of importance and the crime a grave one, he shall be tried for the crime of disobedience to the authority, unless he should deserve the legal classification of an accomplice.

ART. 576. The provisions of articles 552 and 569 are applicable to the search of papers and effects.

ART. 577. If in order to determine as to the necessity of collecting the things which may have been found during the search an expert examination should be necessary, it shall be ordered at once by the judge in the manner prescribed by Chapter VII of Title V.

ART. 578. If the book which is to be the subject-matter of the search should be the protocol of a notary, the provisions contained in the notarial law shall be observed.

If a book of the registry of property should be in question, the provisions of the mortgage law shall be observed.

If a book of the civil or commercial registry should be involved, the provisions of the law and regulations relating to these services shall be observed.

ART. 579. The judge may order the detention of private postal and telegraphic correspondence which the accused may transmit or receive and the opening and examination thereof, if there should be indications of arriving by these means at the discovery or verification of some fact or circumstance of importance in the cause.

ART. 580. The provisions contained in articles 563 and 564 are also applicable to the detention of correspondence.

The performance of this duty may also be entrusted to the administrator of posts and telegraphs or to the chief of the office in which the correspondence should be.

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ART. 581. The employee detaining the correspondence shall immediately forward the same to the examining judge of the cause.

ART. 582. The judge may likewise order that any telegraph administration furnish copies of telegrams transmitted by it if they might contribute to the elucidation of the facts in the cause.[a]

ART. 583. The decree setting forth the reasons ordering the detention and search of correspondence, or the delivery of telegrams transmitted, shall specify the correspondence to be detained or examined, or the telegrams, copies of which are to be delivered, by means of the designation of the persons to whom addressed, or by other equally specific circumstances.

ART. 584. The person interested shall be cited for the opening and examination of correspondence.

The latter, or the person he may designate, may be present thereat.

ART. 585. If the person accused should be in default, or if upon being cited to attend the opening he should not desire to be present, nor appoint any other person to attend in his name, the examining judge shall nevertheless proceed to open said correspondence.

ART. 586. The work shall be conducted by the judge himself opening the correspondence, and after reading it to himself he shall lay aside that which refers to the acts, the subject of the cause, and the preservation of which he may consider necessary.

The envelopes and sheets of this correspondence, after the said judge has made the notes necessary for the performance of other work of investigation to which the correspondence may give rise, shall be rubricated by all those present, and shall be sealed with the seal of the court, all being afterwards enclosed in another package, upon which the proper endorsement shall be placed, and the judge shall retain the same in his possession during the *sumario*, under his liability.

This package may be opened as often as the judge may consider it necessary, the person interested being previously cited.

ART. 587. Correspondence which does not relate to the cause shall be delivered to the accused or to his representative at once.

If the former should be in default, it shall be delivered sealed to a member of his family of legal age.

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[a] By a royal order transmitted by the Department of Grace and Justice to the presiding judges of audiencias on December 12, 1883, it was decided:

1. That the administrations of telegraphs must furnish the copies of telegrams of the domestic as well as of the international service, transmitted by them, to competent judges and courts when called upon to do so by virtue of the provisions of articles 579 et seq., of the Law of Criminal Procedure, and with the formalities prescribed therein.

2. That said administrations are also obliged to show to judges and courts the originals of the telegrams for their inspection, description, or examination by experts, and in general for compliance with any judicial order relating to the criminal action, provided the request be made in writing and the reasons for the request set forth in accordance with the said law.

And 3. That the administrations of telegraphs must likewise deliver to the competent examining judge or court the originals of the telegrams transmitted of the domestic as well as of the international service when they shall state the absolute necessity of having the same at hand for an expert investigation or ocular examination, in order that they may figure in the action as corpi delicti or exhibits, but in such case the administration must retain a certified copy of said originals and require the judge or court to return the same upon the conclusion of the cause.

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If no relative of the accused be known, said package shall be kept sealed in the possession of the judge until there is a person to whom delivery can be made according to the provisions of this article.

ART. 588. A record shall be made of the opening of the correspondence, in which shall be stated all that may have occurred thereat.

This record shall be signed by the examining judge, the secretary, and other persons present.

TITLE IX.—BONDS AND ATTACHMENTS.

ART. 589. If the *sumario* should show indications of criminality against any person, the judge shall order that he give a bond sufficient to secure the pecuniary liabilities which may finally be declared to lie, the same decree ordering the attachment of sufficient properties to meet such liabilities should he not give bond.

The amount of the latter shall be fixed in the same decree and can not be less than one-third more than the entire probable amount of the pecuniary liabilities.

ART. 590. All proceedings upon bonds and attachments shall be conducted upon a separate record.

ART. 591. The bond may be personal, pignorative or mortgage.

It may be constituted in coin or in public securities at the market price, whether the property of the accused or of another person, and shall be deposited in the institution set aside for the purpose.

The stock and obligations of railroads and public works, as well as other commercial and industrial securities whose quotation upon the exchange may have been duly authorized, shall also be admissible in the discretion of the judge or court, and shall be deposited in the same manner as the former.

Bonds on pledges which consist of any other personal property shall also be admissible in the discretion of the judge or court, after their appraisal, and shall be deposited, according to their class, in the manner prescribed in articles 600 and 601.[a]

ART. 592. Any Spaniard of good conduct residing within the territory of the jurisdiction of the court in the full enjoyment of his civil and political rights, and who has paid for three years prior thereto a direct tax of 100 pesetas at least per annum on real estate of his own ownership, or of 200 pesetas by way of subsidy on his business, may be a personal bondsman.

No person shall be admitted as a bondsman who is or has been that of another until the first bond has been cancelled, unless he is, in the opinion of the judge or court, well known to be responsible for both.

When a personal bond is declared sufficient, the amount for which the bondsman is to answer shall also be fixed.

ART. 593. The mortgage bond may be substituted by another one in cash, public securities or bonds, and other movables of those enumerated in article 591 in the following proportion: The value of the property of the mortgage shall be double that in cash fixed for the bond, that of bonds or securities one-fourth more than the latter at

[a] According to article 533 the provisions of this and of the following articles up to article 596 apply to bonds offered to obtain the temporary liberty of an accused person.

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the market price. If the substitution should be made by any other movables given in pledge, the value of the latter must be double that of the cash bond.

ART. 594. The property constituting the mortgage and pignorative bonds shall be appraised by two experts appointed by the examining judge or court taking cognizance of the cause, and the titles of property relating to the estates offered in mortgage shall be examined by the public prosecutor and must be declared to be sufficient by the said judge or court when proper.

ART. 595. The mortgage bond may be executed by means of a public instrument or *apud acta*, there being issued in the latter case the proper mandate for its inscription in the registry of property.

After the mandate has been returned by the register it shall be attached to the cause.

The receipt showing the deposit of the cash shall also be attached thereto, as well as that for the public securities and other obligations in the cases in which the bond is thus constituted.

ART. 596. An appeal lies from the decision of the judge classifying the sufficiency of the bonds.

ART. 597. If upon the day following the notification of the decision rendered in accordance with the provisions of article 589 no bond should be furnished, the attachment of property of the accused shall be proceeded with, he being requested to indicate property sufficient to cover the amount which may have been fixed for the pecuniary liabilities.

ART. 598. If the accused should not be found, the request shall be made of his wife, children, agent, servants, or persons found in his residence.

If no one should be found therein, or if the accused or agent, in a proper case, should not desire to designate property, such property as is believed to belong to the accused shall be attached, the order established in article 1445 of the law of civil procedure being observed under the prohibition contained in articles 1446 and 1447 of the same.[a]

ART. 599. When they indicate property and the sheriff charged with levying the attachment should not consider it sufficient, he shall attach furthermore such property as he may consider necessary, subject to the provisions of the foregoing article.

ART. 600. If the property attached should consist of cash, public securities, commercial or industrial securities which are quoted, gold or silver jewelry, or precious stones, they shall be deposited in the public establishment set aside for the purpose; other personal property shall be deposited in accordance with an inventory by the person entrusted with the attachment, with the resident having an office he may designate.

The depositary shall sign a receipt, binding himself to preserve all the property subject to the orders of the judge or court having cognizance of the cause, or otherwise to pay the amount for the security of which the attachment may have been made, without prejudice to the criminal liability he may incur.

The depositary may collect and preserve in his possession the property attached or leave it under his liability in the residence of the accused.

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[a] See in Appendix III the articles referred to.

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ART. 601. If the property attached should consist of live stock, the accused shall be required to state whether he wishes the same sold or kept in deposit and administration.

Should he wish its sale, the sale thereof shall be proceeded with at public auction after its appraisal, to the extent necessary to cover the amount fixed, which shall be deposited in the public establishment set aside for the purpose.

Should he choose the deposit and administration thereof, the judge shall appoint a depositary-administrator, who shall receive the property under inventory and shall bind himself to render to the court a properly vouched account of his expenses and profits upon demand.

ART. 602. The depositary-administrator shall see that the live stock give the profits pertaining to their class in accordance with the conditions of the country, and shall endeavor to preserve and increase the same.

Should he deem it advisable to sell all or some stock, he shall request the proper authorization of the court.

They shall be sold, even against the will of the accused and the opinion of the depositary-administrator, whenever the cost of administration and preservation exceeds the profits they give, unless the payment of said expenses be assured by the accused or by another person on his behalf.

ART. 603. When real property is attached, the judge shall decide whether or not the attachment is to extend to its fruits and rents.

ART. 604. When the attachment of real property is decreed, a mandate shall be issued ordering that the notice be entered which the mortgage law requires.

ART. 605. If plantings, fruits, rents, or other similar property should be attached, the judge may decree, if he should deem it advisable in view of the circumstances, that the accused continue administering the same in person or through the person he may designate, in which case an intervener will be appointed.

Should the accused express a desire not to administer it himself, or if the judge should not deem it advisable to entrust the administration to him, a person to take charge thereof shall be appointed, in which case the accused may appoint an intervener in whom he has confidence.

ART. 606. The judge shall determine, under his liability, whether the administrator is to give bond for the faithful discharge of his duties and the amount thereof in a proper case.

ART. 607. The administrator shall be entitled to a compensation:

1. Of one per cent of the net proceeds of the sale of products.

2. Of five per cent of the net proceeds of the administration not arising from the cause mentioned of the foregoing paragraph.

If no property should be sold or there should be no net proceeds, the judge shall fix the sum which the administrator is to receive, according to the customs of the town in which the administration is conducted.

ART. 608. The administrator shall inform the intervener of the administrative acts which he proposes to take, and if the latter should not consider them advisable he shall make the proper remarks.

If the administrator should insist in carrying out the administrative acts to which the intervener may have objected, the latter shall report to the judge, who shall decide what may be advisable.

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ART. 609. If the administrator should not have given bond, the intervener shall keep one of the keys of the place or storehouse in which the products are kept or in which the proceeds of their sale are deposited, or the judge shall take the measures he may deem advisable to prevent any loss.

ART. 610. If the attachment should be of pensions or salaries, a communication shall be addressed to the person who is to pay the same in order that he may retain such portion thereof as is prescribed by article 1449 of the law of civil procedure.[a]

The detention shall be raised as soon as the amount ordered secured has been covered.

ART. 611. If during the course of the action sufficient causes should arise to lead to a presumption that the pecuniary liabilities which may definitely be required will exceed the amount previously fixed to secure the same, the bond or attachment shall be ordered increased by a decree of the court.

ART. 612. An order shall also issue requiring the reduction of the bond and the attachment to a lesser amount than that fixed, should there be sufficient cause to believe that the amount of the same is higher than the pecuniary liabilities which may definitely be imposed on the accused.

ART. 613. If it shall become necessary to enforce the pecuniary liabilities referred to in this title, the provisions prescribed by article 536 shall be observed.

ART. 614. Judges and courts shall apply the provisions of the civil laws on bonds and attachments in all that is not provided for in this title.

TITLE X.—CIVIL LIABILITY OF THIRD PERSONS.[b]

ART. 615. If during the course of the *sumario* the existence of civil liability of a third person is indicated in accordance with the respective articles of the penal code, or on account of any person having acquired profit from the effects of the crime without consideration, the judge, at the instance of the civil plaintiff, shall require a bond of the person against whom the liability appears, or in his absence he shall attach, in accordance with the provisions of title IX of this book, such property as may be necessary.

ART. 616. The person of whom a bond is required or whose property is attached may, during the course of the *sumario*, state in writing his reasons for not being considered civilly liable, and the evidence he can offer to the same end.

ART. 617. The judge shall refer the document to the party interested, and the latter shall return the same within the period of three days, also suggesting the evidence to be taken in support of his contention.

ART. 618. Thereupon the judge shall decree the taking of the evidence proposed and shall pass upon the claims made, provided that he

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[a] See in Appendix III the article referred to.

[b] Articles 17 to 19 of the Penal Code specify what persons are subsidiarily liable for the return of the thing, the object of the crime, the repair of the damage caused or indemnity for losses; and article 126 of the same sanctions in every case the obligation of restoring the effects of a punishable act acquired without a good consideration. (*See Appendix II.*)

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can do so without retrogression or prejudice to the principal object of the examination.

ART. 619. A separate record shall be made of all that relates to the civil liability of a third person and to the incidents which the occupation may occasion, and at the proper time the restitution of the things which may be in his possession, but without in any manner hindering or suspending the course of the examination.

ART. 620. The provisions of the foregoing articles shall also be observed with regard to any claim for the restitution to their owner of any of the effects and instruments of the crime in the possession of a third person.

The restitution to their owner of the instruments and objects of the crime can never take place until after the oral trial has been held, excepting in the case mentioned in article 844 of this law.

ART. 621. The orders made in these incidents shall be executed without prejudice to the parties injured thereby renewing their claims at the oral trial, or to the proper civil action, which they may otherwise bring.

TITLE XI.—CONCLUSION OF THE SUMARIO AND DISMISSAL OF PROCEEDINGS.

CHAPTER FIRST.—*Conclusion of the sumario.*

ART. 622. After the proceedings decreed at the instance of the court or of a party have been held by the examining judge, if the latter should consider the *sumario* concluded he shall so state, transmitting the records of the proceedings and exhibits to the court competent to take cognizance of the crime.

If there be no private accuser and the public prosecutor shall consider that sufficient elements have been collected in the *sumario* to make the classification of the acts and to begin the proceedings of the oral trial, he shall so inform the judge of examination in order that the proceedings had may be forwarded to the court of competent jurisdiction without delay.[a]

ART. 623. In either case notice of the termination of the *sumario* shall be served upon the private complainant, if there be any, even

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[a] The two following questions, submitted to the office of the *fiscal* of the Supreme Court in 1887, bear some relation to the provisions of this chapter:

"In causes in which a criminal chamber is competent, by reason of the character of the persons against whom the proceedings are brought, can said chamber make orders transmitting the records to the *fiscal*, for him to request what he may deem proper as to the investigation?

"Upon the conclusion of the proceedings of the *sumario* in such cases, when they are conducted by a judge of examination by delegation, who is competent to decree the termination of the *sumario*?"

The answer (*Instruction 17 of the report of 1887*) was as follows:

"With regard to the first, there is no doubt as to the power of the chamber to do so.

"There is no reason whatsoever for the *fiscal* to abstain from demanding the taking of such steps as he may deem pertinent, because in the conduction of these *sumarios*, as well as in that of all of them, the public prosecutor exercises his supervision in accordance with law.

"With regard to the second, the power to declare the termination of a *sumario* in the causes referred to in the question is vested, as in all processes, in the examining judge, who, even though he shall have been delegated by the

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though he should only have the character of a civil plaintiff, upon the accused and upon the other persons who may have incurred civil lia-

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audiencia to conduct the *sumario*, exercises during the proceedings proper and independent functions in accordance with the third paragraph of article 303 of the law of criminal procedure."

Even though it shall appear that an accused person is exempt from liability, the examining judge can not abstain from holding all the essential proceedings of the *sumario*. (*Report of the fiscal of the Supreme Court of September 15, 1883, number 12.*)

Days upon which courts and tribunals are not sitting in accordance with law are legal for the proceedings of the *sumario* provided for in this article up to article 633. (*Report of the fiscal of the Supreme Court of September 15, 1883, number 13.*)

Various *fiscales* of audiencias have been in doubt as to whether, in view of the spirit of the law of criminal procedure and of the letter of articles 622 and 630, the judge of examination or the audiencia, in their respective cases, can declare that a *sumario* is not terminated and order the taking of steps against the opinion of the prosecuting officials.

The question proposed is one of the most important and of the greatest difficulty which the application of the new system of criminal proceedings offers.

In order to decide it, it is absolutely necessary to consider the principle which is the basis for the reform in the criminal procedure and the formal declarations which are embodied in the preamble of the law in force.

The accusatory principle, which the new system embodies, logically leads to a decision in a specific sense. It is true that this principle has not been fully developed, but it is also true that the effects thereof must be almost illusory, or that they must affect a question of such gravity and importance.

By separating the functions of the preliminary investigation from those pertaining to the sentencing court; by intrusting the former to a judge under the supervision of the prosecuting department, reserving to the latter the exercise of the penal action, on behalf of the social interests, the points of view are obtained the development and consequences of which produce the resolution desired.

The letter of the second paragraph of article 622 of the Law of Criminal Procedure contributes to facilitate said decision.

The language employed in the law shows that, with regard to the point in question, the prosecuting department is not in the same situation which it ordinarily occupies in matters in which it takes part.

It does not make a recommendation in such case, which the judge or court to whom it is made is free to accept or reject, as he may deem proper. No; the prosecuting department, if it believes that the *sumario* is terminated, states this fact, brings it to the attention of the judge of examination, and the latter can not ignore this statement, and is therefore obliged to transmit the proceedings had to the court of competent jurisdiction without further delay.

Here we find a most important change, which shows one of the most notable effects of the reform of the system of procedure.

The examining judge may, in accordance with the first paragraph of the said article 622, declare the *sumario* terminated. Thereupon the prosecuting department shall examine the judicial decision before the audiencia, and shall state whether or not he agrees thereto.

But this right of the examining judge, subject afterwards to the decision of the prosecuting department, is also vested in absolute terms in the said department.

When the *fiscal*, by the means of the supervision which the law grants him in the conduction of *sumarios*, is of the opinion that the ends have been attained which article 299 of the law of criminal procedure requires for these proceedings, and shall consider that sufficient elements have been collected in the *sumario* to make the classification of the acts and enter upon the proceedings of the oral trial, he has the right to state this fact in order that the *sumario* may be declared terminated.

In this point, as well as in all which constitutes the essence, so to say, of the functions intrusted to the prosecuting department, neither the judge of examination nor the court which is afterwards to pronounce sentence can pass upon his conduct.

The *fiscal* conscientiously observing the legal provisions, absolutely independent of judges and courts, examines, considers, and decides what he may consider

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bility, summoning them to appear before the proper audiencia within the period of ten days, or sixty days if the summons should be to

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proper in a matter; and as he can not be affected by anything altering his judgment with regard to the classification which he makes of the punishable acts, neither can he, with better reason, subject his opinion and adjust his conduct to the judgment or decision of a person who, whatever high functions he may discharge, does not have the delicate and high mission of exercising the public action on behalf of the social interests, the defense of which is primarily intrusted to him.

Does the foregoing signify that courts must invariably follow the opinion of the *fiscal?* Not at all, because it is necessary to distinguish between those points where the prosecuting department decides with a statement of his opinion, and those in which manifesting his opinion, the court is vested with the full power required for a proper administration of justice.

Difficulty may be encountered in distinguishing between these two points, but it can be surmounted by considering the special mission of the prosecuting department, which is not and can not be confounded with that of the courts.

When the question is to determine whether the penal action is sufficiently prepared and whether or not it is to be exercised, and a proper action instituted, then, in either case, the prosecuting department shall independently, but under its own liability, act as it may deem proper, and does not limit itself to proposing, but to deciding, unless there shall be a private accuser of a different opinion, in which case the court may and must decide with full powers.

A logical and unavoidable consequence of the foregoing is that the judge of examination must follow the judgment of the *fiscal* with regard to declaring the termination of the *sumario.*

The second part of the question remains, that is to say, that relating to article 630 of the aforesaid law of criminal procedure.

In order to decide it, it is necessary to apply all that has been said with regard to the accusatory principle and the spirit of the reform of the procedure, as well as all that relates to the special functions of the prosecuting department as the representative of the public action.

It appears hereupon that audiencias or criminal chambers are under the obligation, like judges of examination, to declare a *sumario* terminated, if the prosecuting department so requests, and there is no private accuser opposing it.

In arriving at this point of the question it is necessary to consider two special circumstances which may affect it.

The first consists in that the law does not give him this power, as in speaking of the judge of examination the latter may, in accordance with the first paragraph of article 622, declare the *sumario* terminated, and transmit it to the sentencing court.

The second results from the different language used by said law in the second paragraph of article 622 and that of 630.

According to the letter of the former, and even without other considerations, the judge is obliged to decide in accordance with what the *fiscal* reports or states.

But according to article 630 the court is not subjected in an express and final manner to the opinion of the *fiscal.*

If the first circumstance deserves attention it must be considered in favor of the decision indicated, because if the judge of examination can order the termination of a *sumario* at his own instance, and this, notwithstanding, must subject himself to the opinion of the *fiscal*, there is greater reason for the court, which can not exercise this power at his own instance, to follow his judgment.

The second circumstance the undersigned believes can not deserve so much importance as to discover in the law an inconsistency in its spirit.

It is true that article 630 says only that the court shall render a decision affirming or revoking that of the judge of examination relating to the termination of the *sumario.* But this does not signify that the court, in contravention of the reasons stated, can act contrary to the judgment of the *fiscal.*

The prosecuting department may have requested the affirmation or revocation of the decision mentioned, and therefore the court, according to the letter of article 630, may affirm or revoke it. (*Report of the fiscal of the Supreme Court of September 15, 1883, No. 25.*)

The opinion of the same office, as contained in the report of September 15, 1884, is less decisive and even contradictory, according to which the determination of the conclusion of the *sumario* pertains to the judge "under the most

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appear before the Supreme Court. At the same time it shall be communicated to the public prosecutor if the cause involves a crime in which he should intervene by reason of his office.[a]

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complete liberty of judgment within the law, for a reason which renders the alleging of any other useless, because the judge is the only one responsible for the decree," and "the power of the prosecuting official is limited to enforcing this liability at the proper time and in a proper case, if he deems that it lies."

It is the duty of the court to decide whether a dismissal of the proceedings or the opening of the oral trial should take place, in case the public prosecutor and the private accuser are of different opinions. (*Circular of the office of the fiscal of the Supreme Court of November 19, 1883.*)

In the seventh instruction which accompanies the report of 1886, it is recommended that the *fiscales* observe the twenty-fifth instruction above cited, adding: "taking care to protest whenever a decree of this character is revoked against their opinion."

After a *sumario* has been transmitted to the audiencia, all orders issuing in any matters which are a part thereof must be communicated to the public prosecutor, no distinction being made between orders which do and those which do not affect the accusation. (*Report of the fiscal of the Supreme Court of September 15, 1883, No. 35.*)

If an accused person be declared in default without any utterance as to the termination of the *sumario*, the audiencia of Madrid in its decision (of July 4, 1883) stated as follows:

"Considering that in accordance with the provisions of article 840 of the law of criminal procedure, when, as in the present case, the cause has reached the *sumario* stage, after the proper proceedings have been had, the *sumario* must be declared terminated and the steps provided for by article 622 of the said law must be taken, all without prejudice to the declaration of default prescribed in article 839, and shall declare the *sumario* terminated."

[a] There have arisen doubts in the compliance of article 623 of this law as to whether accused persons who must be summoned for appearance before the proper audiencia within a specific period should be required to appoint a solicitor and an attorney to represent and defend them. The law, no doubt supposing that as in accordance with article 118 this demand must be made in every case in which it might produce legal effects, has not made a similar specification in other articles. But as it may occur that the demand was not made, or that the solicitor and attorney designated, residing in the seat of the court of examination, are not empowered to discharge their duties in the town where the trial is to be held, it would always be advisable that at the proceedings mentioned in article 623 a new demand be made of the accused, excepting only when, the demand having been made in accordance with article 118, they should have absolutely renounced the right to appoint counsel. And even in such case the exercise of this renounced right must be respected, whatever be the stage of the action that, without embarrassing its progress and regular course, the accused designate solicitors and attorneys who shall be admitted without prejudice to considering as valid and in force all that may have been done on motion of the counsel assigned them by the court, by reason of their not having availed themselves of their right at the proper time. (*Circular of the Chief Justice of the Supreme Court of June 14, 1883.*)

Must the prosecuting official be heard by the competent superior court before a decision is rendered affirming or revoking that of the lower court declaring the act which gave rise to the *sumario* to be a misdemeanor?

"Undoubtedly the prosecuting official must be heard before the decision referred to is rendered.

"It makes no difference that articles 624 and 625 of the law of criminal procedure, which treat hereof, are silent as to the intervention which in order to render a decision the prosecuting official must have, because it is essential and even rudimentary that in all causes involving acts which have the character of public crimes, the said prosecuting department be a party, and it is impossible not to consider the same, when an important decision is to be rendered fixing the juridical character of the matter.

"If against all that is rational and logical, the unusual case should occur of a court believing the contrary, it would be absolutely necessary to avail one's self of the legal remedies, in order that it shall never be considered that the prosecuting department neglects or abandons what constitutes one of its most sacred duties." (*Report cited of 1883, No. 26.*)

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ART. 624. If the examining judge should consider the act which gave rise to the *sumario* a misdemeanor, he shall order the process to be forwarded to the municipal judge, submitting the order thereon for consultation to the competent superior tribunal.

ART. 625. As soon as the order becomes final by reason of the approval thereof by said superior court, or on account of the non-admission of the appeal for annulment of judgment which in a proper case may have been interposed, the parties shall be summoned to appear within a period of five days before the municipal judge to whom the cognizance thereof pertains.

After the record of the proceedings has been received by the municipal judge, the action shall proceed in accordance with the provisions of Book VI of this law.

ART. 626. With the exception of the cases provided for in the two foregoing articles, the court receiving the record of the proceedings and exhibits shall order them forwarded to the *Ponente* for such period as may be lacking to make up the period of the summons, first opening the packages and other closed and sealed parcels which the judge of examination may have forwarded.

The secretary shall make a record of the opening, in which he shall state the condition in which they were found.

ART. 627. Upon the expiration of such period they shall be referred for examination for another period not less than three nor more than ten days, according to the volume of the process, to the public prosecutor, if the cause involve a crime in which he should intervene, and afterwards to the solicitor of the complainant should he have entered an appearance.

If the cause should exceed one thousand folios the period may be extended, but such extension can never exceed a similar period.

Upon the return thereof a document shall be attached consenting to the order of the inferior court declaring the termination of the *sumario*, or requesting the taking of new steps.

ART. 628. Upon the return of the cause, or after it has been recovered from the possession of the person who last received it, it shall be referred immediately for three days to the *Ponente* with the documents presented.

ART. 629. The court, in ordering the delivery of the case, shall order what it may deem proper so that the *fiscal* or the complainant, in a proper case, may examine the correspondence, books, papers, and other exhibits without danger of altering their condition.

ART. 630. Upon the expiration of the period mentioned in article 628 the court shall render a decision affirming or reversing the decree of the examining judge.[a]

ART. 631. If such decree should be reversed an order shall issue returning the proceeding to the judge who may have transmitted the same, stating the measures to be taken.

Such exhibits shall also be returned which the court may consider necessary for the taking of the new steps.

ART. 632. If the decree declaring the termination of the *sumario* be affirmed, an order shall issue for the cause to be brought before the

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[a] In the opinion of the office of the *fiscal* of the supreme court, the court can decree the revocation of the order terminating the *sumario* and the taking of such additional steps determined by the same, even though the opinion of the *fiscal* should be in favor of the confirmation of the order. (*Report of the fiscal of the Supreme Court of September 15, 1884, 5th question.*)

See notes to article 622.

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court for hearing with a citation of the public prosecutor if he takes part in the cause, and of the solicitor of the private complainant, if there be any.[a]

ART. 633. The court shall decide within three days after the hearing, ordering the beginning of the oral trial or dismissing the case.

CHAPTER II.—*Dismissal of proceedings.*

ART. 634. The dismissal of proceedings may be absolute or provisional, total or partial.

If the dismissal of proceedings be partial, the institution of the oral trial with regard to the accused whom it may not favor shall be ordered.

If it be total, the cause and exhibits whose owner is unknown shall be ordered filed after the taking of the steps necessary for the execution of what may have been ordered.

ART. 635. The exhibits whose owner is known shall continue to be retained, if a third person so requests, until the civil action which it is intended to bring has been decided.

In such case, if the court should consent to the detention, it shall fix a period within which proof shall be adduced of the institution of the action.

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[a] The doubt which has arisen as to whether the dismissal of proceedings should be requested in the petition referred to in article 627 or verbally at the hearing mentioned in this article has been decided to the effect that the termination of the proceedings shall be moved by a request for a final or temporary dismissal of proceedings at the hearing referred to in this and the following article, the record of the motion for dismissal being embodied in the record or minute of the hearing which may be made, in order that the provisions of articles 642 and 644 may be complied with in each respective case. (*Circular of the presiding judge of the supreme court of July 14, 1883.*)

The public prosecutor must be present at the hearing provided for in this article and move the dismissal or the opening of the oral trial; but he must not confine himself to a protest by reason of his motion requesting new proceedings not having been granted.

"The independence of the public prosecutor, the extent of the powers which the law grants him for a better discharge of his difficult duties never grant authority to a prosecuting official not to respect the decisions of a court, and even rebel against them, attempting to enforce his opinions at any cost, no matter how well founded they may be." (*Circular of the office of the fiscal of the supreme court of November 2, 1883.*)

The oral trial should not be opened unless there be sufficient reasons to charge a person as the principal, accomplice, or accessory of a crime, unless there should be probability that these reasons will necessarily appear from the evidence which must be requested taken in such case, but after an oral trial has been begun it is absolutely necessary that it be continued according to the legal procedure, and closed by the sentence which may be considered just. (*Statement of the fiscal of the supreme court of September 15, 1883, No. 29.*)

In accordance herewith the supreme court declared, in a decision of June 30, 1884, that, in order that the oral trial may be opened in any cause, it is necessary that there be a person against whom to proceed as author, accomplice, or accessory to the crime which is being prosecuted, which determination is made at the proceedings of the respective *sumario.*

For the opening of the trial it is essential that there be a person indicted, and if there be no warrant of prosecution the trial can not be opened. (*Decision of December 19, 1884.*)

The dismissal of proceedings must be moved orally at the hearing referred to in this article, which must be held without publicity and without the presnece of the accused, but with the attendance of those who have a right and even the duty to attend (the public prosecutor when one takes part in the cause, and the solicitor of the private complainant if there be any). (*Statement of the fiscal of the supreme court of September 15, 1883, numbers 28 and 30, and 8th instruction of the report of 1886.*)

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Upon the expiration of the period fixed according to the provisions of the foregoing paragraph, without proof of the exercise of a civil action having been adduced, or if no one should have requested that the retention of the exhibits continue, they shall be returned to their owners.

The person in possession of the thing at the time the judge of examination seized the same shall be considered the owner.

ART. 636. An appeal for annulment of judgment only shall lie from decrees of dismissal.[a]

ART. 637. An absolute dismissal of proceedings shall lie:

1. Where there are no reasonable indications of the perpetration of the act which may have given rise to the institution of the cause.

2. When the act does not constitute a crime.

3. When the persons accused appear to be exempt from criminal liability as principals, accessories, or accomplices.[b]

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[a] According to the doctrine laid down by the second chamber of the Supreme Court in its decisions of November 29, 1884, and other subsequent ones, as an appeal for annulment of judgment must be based upon the adjudging portion of the decisions against which it is allowed, it can not be extended to those which the law attributes exclusively to the examining judge, and in a proper case to the superior court, as are those which relate to the consideration of the merits adduced by the *sumario* to indict or not the person against whom it is directed, against which decisions the law grants remedies which if not utilized make the decree of the termination of the *sumario* final and definite with regard to the proceedings had to that time, and reversible only with regard to its adjudging portion; that is to say, with reference to the opening of the trial, which can not be proceeded with without a prior declaration of prosecution, a guaranty which is necessary to prevent that any accused person be at the mercy of his accuser and tried, even though he be manifestly innocent.

Thus an appeal for annulment of judgment is not sufficient to cause the prosecution of a *sumario* which has been terminated nor to order a trial without a presumed criminal, to which the reversal of a decree of absolute dismissal rendered without a previous declaration of prosecution and an order for the opening of a trial would be equivalent, the only legal terms to which the decision of said chamber can be limited in such case. (*Decision of February 28, 1885.*)

According to various decisions of the Supreme Court, in accordance with the principles which are the bases of the law of criminal procedure in force, the trial can not be instituted after a final declaration of the termination of a *sumario* in which there is no indicted person, because the regularity and order of the former and the preparation thereof require a determination of the person against whom it must be directed, in the absence of which the dismissal of the proceedings must subsist, being the only resolution proper when there is no occasion for the opening of a trial. (*Decision of November 19, 1885.*)

[b] When it shall appear from the *sumario* that a crime has been committed, but the indications of the criminality which gave rise to the institution of proceedings against a person shall have disappeared completely, a provisional dismissal thereof shall lie. (*Report of the fiscal of the supreme court of September 15, 1883, No. 31.*)

See the 60th instruction of the office of the *fiscal* of the Supreme Court of September 15, 1883, in the note to art. 794.

After a *sumario* has been instituted at the instance of the court for a crime which can be prosecuted at the instance of a party only, an absolute dismissal is not proper, but a declaration that the proceedings have been wrongfully brought. (*Report of the fiscal of the Supreme Court of September 15, 1883, No. 32.*)

In what cases does an absolute dismissal of proceedings lie, treating of accused persons who may appear exempt from criminal liability?

If the exemption from liability is conclusively shown by the *sumario*, there is no reason for the holding of the oral trial, and consequently an absolute dismissal is proper. But if there is some doubt as to such exemption, because there are only indications thereof during the examination, it is advisable to

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ART. 638. In the first and second cases of the preceding article, in decreeing the dismissal, a declaration may be made that the institution of the cause does not prejudice the reputation of the accused.

At the instance of the accused, the right may also be reserved him to prosecute the complainant for calumny.

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request the institution of the oral trial, and according to the result of the evidence, and making use of the right granted by articles 732 and 653 and 650 of the said law, the acquittal of the accused may be secured when their exemption from liability shall have been confirmed at the trial. (*Report of the fiscal of the Supreme Court of September 15, 1883, No. 39.*)

The same office, in a circular of October 10, 1887, issued the following rules:

"1. They shall move (the *fiscales*) the dismissal in accordance with numbers 1 and 2 of article 637 of the law of criminal procedure, whenever the *sumario* shall clearly show that it is proper, and otherwise they shall request the opening of the oral trial and shall formulate their conclusions in an accusatory sense, or at least in an alternative form permitting the prosecution of the trial, without prejudice to their modification after the evidence has been heard.

"2. In order to move the dismissal in accordance with No. 3 of the said article 637, it shall be indispensable that the exemption shall be established in the *sumario* in a conclusive manner; but otherwise they shall request the opening of the trial, taking into consideration the provisions of the preceding rule.

"3. If, the public prosecutor having requested the dismissal, the trial shall have been begun at the request of the private accuser, the *fiscales* shall formulate their conclusions in the manner they may deem just, without prejudice to the right granted them by article 732 of the said law."

In causes against persons over nine and under fifteen years of age, should the dismissal be requested when the proceedings of the *sumario* offer sufficient grounds to consider the liability, or is it indispensable to await the oral trial to request and obtain such declaration?

The foregoing question having been propounded by an audiencia, the office of the *fiscal*, in its instructions attached to its report of 1886, answered the same, referring to number 38 of the year 1883, according to which "the question is answered, taking into consideration the provisions of articles 637, 640, and 641 of the law, and adding:

"If the exemption from liability is established conclusively by the *sumario*, there is no reason for the opening of the oral trial, and, consequently, an absolute dismissal is proper. But if there is any doubt as to such exemption, because indications thereof only appear at the investigation, it is advisable to request the opening of the oral trial, and according to the result of the evidence, and making use of the right granted by article 732, in connection with articles 653 and 650 of the said law, the acquittal of the accused whose exemption may have been confirmed by the trial may be procured."

The doubt has also arisen with regard to the application of this article as to when the death of the accused occurs, or any other similar act by which the penal action is extinguished, what form must be employed to close the proceedings during the *sumario* or oral trial. In the opinion of the said office (instruction 10 of 1886) there is no conclusive precept in the law with regard to the cases in question; but by analogy it appears that in such cases the prosecuting officials must move a dismissal, and as a consequence the filing of the cause. If the act should take place during the *sumario*, the public prosecutor must move that it be declared closed, in order that after its transmission to the audiencia, the latter may make the motion above mentioned.

In connection with the application of the same article, the Supreme Court declared, in a decision of April 16, 1885, that the law of criminal procedure does not authorize appeals for annulment of judgment from decrees of absolute dismissal for the sole purpose of converting an absolute dismissal into a provisional one, because in order to decree the latter the knowledge of special data and ground is necessary which are not apparent simply from the character and nature of the acts the subject-matter of the proceedings, and which the higher court can not have in any other manner; and in another decision of June 30, 1886, as the Supreme Court has repeatedly declared, when there is no indicted person, an appeal for annulment does not lie from decrees of absolute dismissal, because it is absolutely necessary that there be an indicted person in order to begin and institute the oral trial, to whom the declarations and decisions rendered in the same may make reference, and that an appeal for annulment of judgment does not lie from decrees of absolute dismissal based upon this reason.

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The court may also at its own instance order proceedings brought against the complainant, in accordance with the provisions of the penal code.[a]

ART. 639. In the second case of article 637, if it should appear that the act constitutes a misdemeanor, an order shall issue to transmit the cause to the municipal judge competent to conduct the proper action.

ART. 640. In the third case of article 637 the dismissal of proceedings shall be confined to the principals, accomplices or accessories who conclusively appear exempt from criminal liability, the cause being continued with regard to those not included in such condition. The provisions of article 638 are applicable to the accused who are declared exempt from liability.

ART. 641. A provisional dismissal of proceedings shall lie:

1. When the commission of the crime which may have given rise to the institution of the cause is not duly established.

2. If it shall appear from the *sumario* that a crime has been committed, and there are not sufficient grounds to accuse one or more specific persons as principals, accomplices, or accessories.[b]

ART. 642. When the public prosecutor shall request the dismissal of proceedings in accordance with the provisions of articles 637 and 641 and no private complainant should have appeared in the cause to sustain the accusation, the court may order that the motion of the public prosecutor be communicated to the persons interested in the exercise of the criminal action, in order that within a reasonable period which shall be given them they may appear to defend their action, should they consider it advisable.

Should they not appear within the period fixed the court shall order the dismissal requested by the public prosecutor.[c]

ART. 643. When in the case referred to in the foregoing article the whereabouts of the persons interested in the exercise of the criminal action should be unknown, they shall be called by edicts, which shall be affixed at the doors of the court and published in the newspapers of the locality or in those of the capital of the province, and they may also be published in the *Gaceta* of the capital of the island.

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[a] The last paragraph of article 336 of the penal code in force in Cuba and Porto Rico is as follows: "The latter (the court) shall order proceedings instituted against the denouncer and accuser provided always that from the papers in the case there should appear sufficient grounds for commencing such proceeding."

[b] See the notes to article 632 with regard to the opening of the oral trial and the notes to article 637, which are applicable in part to this article.

[c] Can a court, which, in accordance with article 642 of the law of criminal procedure, may have ordered that the motion to dismiss of the public prosecutor be communicated to the persons interested in the exercise of the penal action, in order that they may appear to defend their action within the reasonable period allowed them, if they consider it proper, furthermore order that the cause be transmitted to the *fiscal* of the higher court for a decision as to whether or not the accusation should be sustained, as authorized by article 614 of said law?

The doubt which a *fiscal* has had upon this point, this office believes is not well founded, because as the question relative to a dismissal of proceedings which renders the institution of a trial impossible is of such gravity, and as the court is not at liberty to order such trial against the opinion of the prosecutor, the law has considered it advisable to grant the two means which the said articles allow, in order that the dismissal may be ordered with the greatest possible guaranties of certainty.

This office is of the opinion that compliance with both provisions can not offer the slightest difficulty in view of the spirit or letter of either. (*Report of the office of the fiscal of the Supreme Court of September 15, 1883, No. 33.*)

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Upon the expiration of the period of the summons without the appearance of the persons interested, the proceedings shall be as prescribed in the foregoing article.

ART. 644. When the court considers the motion of the public prosecutor relating to the dismissal of proceedings not well taken, and there should be no private complainant to prosecute the action, before consenting to the dismissal it may decide that the cause be transmitted to the *fiscal* of the proper territorial audiencia if the action is being held before a criminal audiencia, or to the Supreme Court if held before a territorial audiencia, in order that, with a knowledge of a result thereof, either official may decide whether the accusation shall or shall not be prosecuted. The *fiscal* consulted shall inform the court making the request of his decision and return the cause.[a]

ART. 645. If a private complainant shall appear to prosecute the action, or if the public prosecutor be of the opinion that the institution of the oral trial is proper, the court may nevertheless decree the dismissal referred to in number 2 of article 637 if it deems it proper. In any other case it can not avoid the holding of the trial.[b]

TITLE XII.—GENERAL PROVISIONS RELATING TO THE FOREGOING TITLES.

ART. 646. In addition to the certificates of the progress of the causes which an examining judge is obliged to direct to the *fiscal* of the respective audiencia, he must also transmit to him a special certified transcript of all orders or decrees from which an appeal lies, or which relate to expert proceedings, or of investigation which are of interest to him in the exercise of his rights as an accusing party, when he can not notify him thereof directly, without thereby staying

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[a] The office of the *fiscal* of the Supreme Court having been asked whether the provisions of this article can be applied by analogy to the case where the *fiscal* may have requested the revocation of the decree of the conclusion of a *sumario*, and that the cause be returned to the examining judge in order that new measures be taken, and that the warrant of prosecution issue which was not issued at the proper time; if the chamber denies the motion of the public prosecutor it confirms the decree of the termination of the *sumario* and summons for the hearing required by article 632 of the law of criminal procedure, said office replied:

"In answering the foregoing question, propounded by the *fiscal* of the audiencia of Burgos and relating to articles 622 and 630, this office is of the opinion, in accordance with the statements contained in its report to the Government of His Majesty of September 15, 1883 (instruction number 25), that audiencias can not revoke nor confirm the decrees in question in contravention of the opinion of the public prosecutor; but should they do so, incorrectly interpreting the opinion of this office, the provisions of article 630 of the law of procedure, the public prosecutor has no other remedy except to protest against such decree, and he must be present at the hearing mentioned in article 632 and interpose the proper remedies against the decision rendered thereafter. The provisions of article 644 can not be applied to these dissensions, because the precepts of the same relate concretely to a different case, and it would not be legal to give them a greater scope than was the intention of the legislator."

(*See notes to articles 622, 630, and 642.*)

[b] Whenever there is in a cause a party disposed to continue the criminal action, the respective court can only decree an absolute dismissal, in accordance with the provisions of article 645 of the law of criminal procedure, in connection with number 2 of article 637, when the act involved does not constitute a crime. (*Decision of June 5, 1884.*)

An absolute dismissal does not lie when there is an accusing party disposed to prosecute his action, and when the act presents the characteristics of crime. (*Decisions of July 11 and October 14, 1887.*)

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the holding of such proceedings, unless the right to intervene therein has been previously reserved to the *fiscal* and no prejudice will be caused by the suspension.

ART. 647. The period within which to appeal for a *fiscal* who is not at the same place as the examining judge shall begin from the day following that on which he receives the certified transcript of the appealable order or decree. The appeal shall be interposed in writing addressed to the judge with a respectful communication.

In any case the examining judge shall acknowledge receipt of certificates of this character upon the very day he receives them.[a]

ART. 648. The *fiscales* shall keep a register in which to enter reports of the institution of causes which they may receive, the statements of the more important progresses transmitted to them by examining judges, especially those mentioned in article 646, and the answers which they on their hand make thereto, or the appeals which they may interpose.

Book Third.—THE ORAL TRIAL.

TITLE FIRST.—CLASSIFICATION OF THE CRIME.

ART. 649. When the oral trial is ordered begun, the cause shall be referred to the prosecuting official, or to the private accuser, if it involve a crime which can not be prosecuted at the instance of the Government, in order that within a period of five days they may classify the acts in writing. Thereupon all the proceedings in the action shall be made public.[b]

ART. 650. The written classification shall be confined to the determination in explicit and numbered conclusions:

1. Of the punishable acts which may result from the *sumario*.
2. Of the legal classification of the said acts, determining the crime which they constitute.

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[a] In order that the public prosecutor may exercise the supervision charged upon him by the Law of Criminal Procedure in the formation of *sumarios*, the examining judge is obliged not only to give the data and transcripts which the said law established, but he must in addition transmit to the *fiscal* of the audiencia the special certificates prescribed by article 646 of the said law.

Article 647 of the same adds that the period within which a *fiscal* must appeal who is not at the same place as the examining judge shall begin to run from the day following that on which he receives the transcript of the appealable order or decree.

In accordance herewith, as article 222 of the law above mentioned prescribes that an appeal can not be interposed until a petition for a rehearing has been filed, the doubt has arisen as to whether the *fiscal*, in order to appeal, as he can do in accordance with article 637, is required first to file a petition for a rehearing.

This office acknowledges that this doubt can arise; but it is of the opinion that, in view of the letter of article 647, the *fiscal* is not obliged to conform to the provisions of article 222.

It is advisable, furthermore, to remember when relations between the *fiscales* of audiencias and examining judges are involved, that the former, although not of the same service as the latter, by reason of the supervising duties which they exercise over the acts of the latter and by reason of their rank, are to a certain degree their superiors, and it does not appear proper that they should petition said judges for a rehearing of their acts as any other party intervening in the *sumario*. (*Report of the fiscal of the Supreme Court of September 15, 1883, number 34.*)

[b] See notes to articles 622 and 623.

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3. The participation therein of the person or persons accused, should there be more than one.

4. The facts appearing from the *sumario* constituting extenuating or aggravating circumstances of the crime or which exempt from criminal liability.

5. The penalties which the person or persons accused may have incurred by reason of their respective participation in the crime.

The private accuser, in a proper case, and the public prosecutor when they bring a civil action, shall state in addition:

1. The sum at which they estimate the losses and damages caused by the crime, or the thing which is to be restored.

2. The person or persons who appear liable for the losses and damages or the restitution of the thing, and the act by virtue of which they may have contracted this liability.[a]

ART. 651. After the prosecuting official has returned the cause, it shall be referred for a like period for the same purpose to the private accuser, if there be one, who shall submit the written classification subscribed by his attorney and solicitor in the manner previously indicated.

Should there be a civil plaintiff, the cause shall be referred to him upon its return by the private accuser or public prosecutor, in order that, in his turn, within a similar period to that fixed in the foregoing articles and with identical formalities he may present numbered conclusions upon the last two points of the foregoing article.

ART. 652. Thereupon the cause shall be referred to the accused and to the third persons civilly liable, in order that, within a similar period and in their order, they may state also by numbered conclusions correlative to those of the classification which refers to them, whether or not they agree to each one, or otherwise state the points of divergence.

For this purpose they shall be assigned an attorney and solictor, should they not have any.

ART. 653. The parties may submit on each of the points which are to be the subject-matter of the classification two or more conclusions in alternative form, in order that if the propriety of the first is not established by the action, any of the others may be considered in the sentence.

ART. 654. The court in ordering that the cause be referred to the parties in compliance with the provisions of the preceding articles,

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[a] "Prosecuting officials would not comply with their duties if, when presenting the written classification to which the article we annotate refers, they should not state in the fifth conclusion in the explicit manner required the penalties which the person or persons accused may have incurred by reason of their respective participation in the crime.

"It is not sufficient, therefore, that it be stated that the penalty incurred is such and in what degree; it is necessary to state the amount or duration of the same as it is considered is required by the participation of the accused and the circumstances of the act." (*Report of the fiscal of the Supreme Court of September 15, 1883, No. 37, and circular of November 15, of the same year.*)

Prosecuting officials may avail themselves of the right to submit alternative conclusions without the provisions of the third rule of article 142 being an obstacle thereto, but the use of this right should be as restricted as possible, especially in the case of article 732. (*Report of the fiscal of the Supreme Court of September 15, 1883, No. 40.*)

After evidence has been taken at the oral trial the public and private accusers may modify their original classification, and the court may propose another classification to the parties, according to articles 732 and 733.

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shall prescribe what it may deem proper, in order that the latter may examine the correspondence, books, papers, and other exhibits, without danger of any alteration in their condition.

ART. 655. If the penalty requested by the accusing parties be of a correctional character, after counsel for the accused have acted upon the transcript of the classification, he may state his absolute conformity with that containing the most serious classification, should there be more than one, and with the penalty requested, the counsel for the defendant stating furthermore if, this notwithstanding, he considers the continuation of the trial necessary.

Should he not consider it necessary, the court, after the ratification of the accused, shall, without further proceedings, issue the proper sentence, according to the classification mutually accepted, and can not impose a higher penalty than that called for.

If such penalty should not be according to said classification, but a higher one, the court shall order the continuation of the trial.

The trial shall also be proceeded with if there be more than one accused person and all should not express such agreement.

If the person or persons accused should disagree only with regard to the civil liability, the trial shall be confined to the proof and discussion of the points relating to such liability.[a]

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[a] The *fiscal* of the Supreme Court, in the report to which we have made reference, of September 15, 1883, No. 41, decides in a negative sense the doubt raised as to whether, if the accusing parties shall have requested a correctional penalty, the accused could be required to state his agreement thereto immediately.

The question as to whether if counsel for the accused having stated his conformity with the penalty requested and not consider it necessary to continue the trial, the accused refusing to ratifiy said instrument, his attorney and solicitor may continue to defend and represent him, has been decided in a contrary manner, there being no necessity to appeal to other solicitors and attorneys, whose appointment is not authorized by law in such case.

The doubt has arisen as to whether, when counsel for the accused having stated his agreement with the penalty requested and the attorney should have stated that he did not consider the continuation of the trial necessary, but if the accused should ratify said instrument, the cause should be returned to the counsel of said accused person in order that he might submit the evidence which he may consider advisable for the defense. In the opinion of the *fiscal* of the Supreme Court, this can not be done, because the law does not allow it in such case, and he is of opinion furthermore that the accused can not complain of no defense thereby.

The court has not the power to ignore the classification mutually accepted, and to continue the trial because such classification contains an error.

Finally, the said *fiscal*, in the document in reference, on the occasion of doubts having arisen as to whether in case the trial should be continued because all the accused do not state their agreement with the penalty requested, the one who shall have agreed thereto may be sentenced according to his said agreement, or in accordance with the results of the trial, together with the other persons accused, makes the following statements:

"As soon as the trial is continued it is not necessary to remember the agreement of some and the disagreement of others. All of the persons accused must be the subject of one and the same sentence which is to be decided upon according to the evidence adduced, and, consequently, he who previously agreed to suffer a specific correctional penalty must now adhere to the results of the action, being affected, therefore, by the evidence submitted, either on his own or on motion of the other accused, or of the contending parties."

The ratification of the accused to the petition which in accordance with the penalty requested his counsel may have presented, must be made before the audiencia. (*Report of the fiscal of the Supreme Court of September 15, 1883, No. 39.*)

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ART. 656. The prosecuting officials and the parties shall state in their respective written classifications the evidence which they intend

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See the Report of the Fiscal of the Supreme Court of 1884, and the notes to articls 742 and 795.

When there are several accused persons in one proceeding, and some do and others do not agree with the accusation, the proceedings must continue with regard to all. (*Report of the fiscal of the Supreme Court of September 15, 1884, sixth question.*)

It appearing that the prosecuting official in his findings classified the acts involved as constituting the crime of discharging firearms, and requested the imposition of a penalty of one year eight months and twenty-one days of correctional imprisonment upon the author; that the defense agreed to said findings, adding that it did not consider the continuation of the trial necessary, the accused ratifying this statement; that the criminal audiencia, believing that a higher penalty than that requested by the prosecuting official might be proper, it ordered the continuation of the trial, during which, upon being questioned by the presiding judge, the accused confessed to being guilty of the crimes of discharge of firearms and assault and battery; that the motion of the defense to discontinue the trial being denied, said prosecuting official modified his findings to the effect that the acts deserved to be qualified as the double crime of the discharge of a firearm and assault and battery, requesting the imposition of a penalty of forty months of correctional imprisonment upon the accused; and, finally, that the said audiencia passed sentence by which, considering the existence of the said crimes of discharge of firearms and assault and battery, it condemned the accused to three years' correctional imprisonment, an appeal for annulment of judgment for breach of form lies in accordance with subdivision 3 of article 912 of the law of criminal procedure, because the continuation of the trial in contravention of the provision of article 655 of the said law places the sentence appealed from in the case prescribed in the same number and article, because the punishment inflicted therein was for a more serious crime than that which was the subject of the accusation. (*Decision of January 24, 1884.*)

A decision which orders the continuation of the trial after the accused and his counsel have agreed to the correctional penalty requested by the accusation, in classifying and imposing a higher penalty, punishes a more serious crime than that which was the subject of the accusation, even though the prosecuting official shall modify his findings during the action, and therefore an appeal for annulment of judgment from said decision lies in accordance with subdivision 3 of article 912 by reason of the violation of articles 655 and 694 of the law of criminal procedure. (*Decision of January 24, 1884.*)

The sentencing tribunal wrongfully interprets article 655 of the law of criminal procedure when it orders the continuation of the trial notwithstanding the agreement of the counsel of the accused ratified by the latter, with the penalty of a correctional character requested by the prosecuting official, and notwithstanding such penalty being the proper one according to the classification accepted by both parties. (*Decision of March 12, 1884.*)

After the continuation of the oral and public trial has been ordered by the sentencing chamber in accordance with the provisions of the 4th paragraph of article 655 of the law of criminal procedure, to which decree the parties agreed, and the prosecuting officials having modified their conclusions in their classification, a sentence which conforms to these conditions, already definite according to law, decides all points which have been the subject-matter of the accusation and of the defense. (*Decision of October 13, 1884.*)

When the court makes use of the power granted it by article 733, and the correctional penalty requested is not proper, according to the classification accepted, even though the accused and his counsel consent thereto, the sentence may impose another one conforming to law, the continuation of the trial being first ordered. (*Decision of December 15, 1884.*)

When the public prosecutor, in his written classification, charged the accused with the crime of theft of 4,805 pesetas and, nevertheless, requested, with manifest error, that he be declared included in the second case of article 547 of the Penal Code and that a penalty of six months' arrest be imposed, while the proper penalty, according to said classification, would be that determined in the third rule of the said article, which is a higher one, and for which reason the

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to introduce, presenting the list of experts and witnesses who are to testify at their instance.

In the lists of experts and witnesses shall be stated their names and surnames, their nicknames, if known thereby, and their domicile or residence, the party presenting the same stating furthermore whether the experts or witnesses are to be cited judicially or whether he agrees to cause their appearance.[a]

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court, in accordance with the prescriptions of the third paragraph of article 655 of the Law of Criminal Procedure, ordered the continuation of the oral trial, and availed itself of the privilege granted it by article 733 of said law, the protest made by the public prosecutor at the time of the oral trial that such trial was improper, because his classification having been accepted by the accused, sentence should have been pronounced without further proceedings and without the imposition of a penalty higher than that requested, as prescribed by the said article 655, in addition to being extemporaneous, because the decree was agreed to in which the audiencia considering that, according to said classification, a higher penalty should be imposed, it ordered the continuation of the trial in accordance with the same article, which can not annul the effects of the accusation made by said prosecutor. (*Decision of December 15, 1884.*)

When two different acts are being prosecuted in a cause which have been committed by two different persons, one of whom agreed to the correctional penalty requested by the public prosecutor in his written conclusions, and as said prosecutor requested the penalty of *prisión mayor* for the other accused, the chamber ordered the continuation of the trial with regard to the latter wihout citing the former as an accused person, because the trial could not continue with regard to him, as he had agreed to the correctional penalty. By virtue hereof the chamber, in rendering the sentence appealed from, did not act in contravention of the provisions of the fourth case of article 655 of the said law, nor did it commit in any of the breaches of form in the trial referred to in the second case of article 911. (*Decision of June 26, 1885.*)

[a] Neither by the article which we annotate nor by article 659 nor, on the other hand, in accordance with the provisions of article 708 shall prosecuting officials or the parties be required to state in their respective written classifications the specific questions which they will later put to the parties and witnesses. (*Report of the fiscal of the Supreme Court of September 15, 1883, No. 42.*)

In accordance with the foregoing, the Supreme Court declared in a decision of October 10, 1883, reversing and annulling a decision of the audiencia of Játiva, that the testimony of witnesses proposed in the conclusions and accompanying the lists of the witnesses to be examined is opportune and proper, and is admissible therefore even though the questions to be put to the witnesses presented are not clearly and fully set forth, because the presiding judge of the court will not permit the witness to answer questions or cross-questions of a captious, suggestive, or impertinent character at the trial, in accordance with the power granted said court by article 708 of the law.

The same court has decided, among other decisions, by those of May 19, October 16, December 15, and June 28, 1883, January 28 and February 5, 1884, that the confession of the accused forms part of the measures of the *sumario* established by the law of criminal procedure for the proof of crimes and the ascertainment of the delinquents, and as the *sumario* is nothing but a preparation for the oral trial at which all the facts are to be elucidated and all questions arising in the cause are to be discussed, the said confession of the accused can not but figure in said trial as an element of proof.

The evidence to be submitted at the oral trial must be stated in the written classification, according to a decision of January 18, 1884.

With regard to public officials whose appointment is left to the initiative of the court and who discharge their duties under the immediate orders of the same, the designation by their names and surnames and the indications of their domiciles strictly in accordance with the provision of the second paragraph of article 656 of the said law is not necessary, because the court may designate and cite them without such requisites. (*Decision of April 15, 1885.*)

The refusal of the court to receive some evidence consisting in the examination of a witness and requested by the defense at the oral and public trial, does

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ART. 657. Each party shall present as many copies of the lists of experts and witnesses as there are other parties who have entered an appearance in the cause, to each of whom one of said copies shall be delivered on the day of presentation.

The original lists shall be attached to the cause.

The parties may also request that such evidence be taken at once, which for any reason whatsoever they may fear can not be taken at the oral trial, or which may cause its suspension.

ART. 658. After the written classifications have been presented or the cause recovered from the possession of the person having it, after the termination of the period mentioned in article 649, the court shall issue a decree declaring the classification to have been made, ordering that it be referred to the *ponente* for three days for the examination of the evidence submitted.

ART. 659. After the cause has been returned by the *ponente*, the court shall examine the evidence submitted and shall immediately make an order admitting that which it considers pertinent and rejecting the rest.

In order to reject the evidence submitted by the private accuser, the opinion of the prosecuting official must be heard, should one take part in the cause.

There shall be no remedy whatsoever against that portion of the decree admitting evidence or ordering such evidence to be taken as is included under the provisions of the third paragraph of article 657.

An appeal for annulment of judgment lies from that part of the decree rejecting or refusing to take evidence, if said appeal is prepared at the proper time with the corresponding protest.

In the same decree the court shall fix the day upon which the proceedings of the oral trial are to begin, taking into consideration the priority of the causes and the time which may be necessary for the citation and appearance of the experts and witnesses.[a]

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not establish the breach of procedure referred to in subdivision 1 of article 911 of the law of criminal procedure when it has not been requested opportunely and formally or when the witness whose examination is requested was not included in the list duly presented in accordance with the provisions of articles 656 and 728, nor is it included in the cases mentioned in subdvision 3 of article 729 of the said law. (*Decision of April 17, 1884.*)

An interrogatory presented after the provisions of article 659 of the law have been complied with is not admissible. (*Decision of July 7, 1884.*)

[a] The office of the fiscal of the supreme court, in the twelfth instruction of the report of 1886, answers a question as to whether in view of the provisions of this article and of article 475 of the Penal Code, in actions for contumely against an authority, the evidence submitted as to the truth of the libellous or calumnious statements should be admitted or rejected, as follows:

"Article 475 of the Penal Code prescribes that a person charged with acts of contumely will not be allowed to furnish evidence tending to prove the truth of his imputations, unless they shall have been directed against public employees about matters concerning the performance of their duties; and the jurisprudence established by the second chamber of the Supreme Court has sanctioned the doctrine that the provisions of article 475 with regard to a public employee not exercising any authority, can have no legal effect when the acts of contumely have been directed against an official who assumes the character of an authority, and therefore they may constitute the crime of outrage."

According to a statement of the Supreme Court, the fact of the chamber admitting as expert evidence that furnished by persons who are not experts, in the appraisal of stolen goods, who appraised them at the oral trial without having seen them, constituted a violation of the essential forms of the action, included in numbers 1 and 2 of article 911, because in addition to said proceeding being improper, it deprives the defense of the appellant of the right of

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ART. 660. The court shall order the issue of the letters rogatory or mandates necessary for the citation of the experts or witnesses which the party may have designated for this purpose.

The letters rogatory or mandates shall be transmitted *ex officio* for execution, unless the party shall request that they be delivered to him.

In such case a period shall be fixed within which he shall return them duly executed.

ART. 661. The citation of experts and witnesses shall be made in the manner prescribed in title VII of the first book.

Experts and witnesses cited who shall not appear without alleging a legitimate cause preventing them from so doing, shall incur the fine prescribed in subdivision 5 of article 175.

If, upon being cited the second time, they should fail to appear, they shall be tried for the crime of refusing assistance, defined in the code, with regard to experts and witnesses.

ART. 662. The parties may challenge the experts mentioned in the lists for any of the causes indicated in article 468.

The challenge shall be interposed within three days following the delivery to the challenging party of the list containing the name of the party challenged.

After the written challenge has been interposed, it shall be referred for a similar period to the party intending to avail himself of the services of the expert challenged.

Upon the expiration of the period and after the record has been returned or recovered, evidence shall be heard thereon for six days, during which each of the parties shall take such steps as he may consider advisable.

After the period for the taking of evidence has expired, a day shall be set for the hearing which the parties and their counsel may attend, and the court shall decide the issue within the legal period.

There shall be no remedy whatsoever against this ruling.

ART. 663. An expert who is not challenged during the period fixed in the foregoing article can not be challenged thereafter, unless he shall subsequently incur any of the causes for challenge.

ART. 664. The court shall also order that the accused who may be imprisoned be conducted at once to the prison of the town where the action is to be continued, citing them therefor, as well as those who may be enjoying temporary liberty, for appearance on the day the court may fix; it shall also order that the decree be served upon the bondsmen or owners of the property given in bond, the necessary letters rogatory and mandates being issued for this purpose.[a]

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taking part in the said evidence and of making such remarks as he might consider proper.

In decisions of December 10, 1883, and April 19, 1884, the said court established that evidence tending to prove the acts of contumely attributed to a governor of a province, in the exercise of his functions, is admissible, and that a court rejecting the same is included in the provisions of number 1 of article 911.

[a] If an accused person, enjoying temporary liberty, notwithstanding his having been cited in accordance with the provisions of article 664 of the law of criminal procedure, shall not appear on the day fixed by the court on which the oral trial is to begin, what measures shall be taken with regard to him?

To this question, which a *fiscal* addressed to this bureau, may be found an answer in articles 835 et seq. of the said law.

In accordance with the provisions of the third case of said article 835, and the prescriptions of article 836, as soon as an accused person is in such case, requisitions must be issued for his call and search, being directed preferably to the

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The lack of the citation mentioned in the foregoing paragraph shall be a cause for annulment, if the party not cited should fail to appear at the trial.

ART. 665. If upon the presentation of the written classifications and upon the examination of the evidence submitted, the presiding judge of the audiencia or criminal chamber should consider it necessary to establish a section in a specific place for the holding of the trial, he shall so order, informing the Colonial Department thereof.

TITLE II.—PRELIMINARY EXCEPTIONS.

ART. 666. The following questions or pleas shall be the subject of preliminary exceptions:

1. A declinatory plea.[a]
2. A plea of *res judicata*.[b]
3. The prescription of the crime.[c]
4. The plea of amnesty or pardon.

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point where the accused may be; and if, upon the expiration of the period fixed in the requisition, the absentee shall not have appeared, then the proceedings stated in articles 839 and 841 of the said law may be taken. (*Report of the Fiscal of the Supreme Court of September 15, 1883, No. 43.*)

See also articles 835, No. 3, 836, 839, and 841 of this law, and the notes to article 633.

[a] The public prosecutor may interpose a declinatory plea at any stage of the cause, according to number 4 of article 19.

A declinatory plea having been duly and formally interposed by the accused as a preliminary exception, in accordance with the provisions of articles 666 and 667 of the Law of Criminal Procedure, basing the same not only upon the incompetency of the criminal audiencia to take cognizance of the cause, but also on that of the examining judge, by reason of his having proceeded without the delegation of the competent higher court, and requesting for such reason a declaration of the nullity of all the proceedings of the *sumario*, the sentencing court is obliged to decide all these questions which have been the subject of the defense of the accused; therefore, an audiencia confining itself to the decision of its own jurisdiction, without making any statement as to that of the examining judge, or the validity of the proceedings of the *sumario*, incurs the breach of form mentioned in number 2 of article 912 of the aforementioned law, as it does not decide all the points which have been the subject of the defense. (*Decison of June 6, 1885.*)

[b] The circumstance of a prior action having been brought against an accused person upon the same acts charged against him is not sufficient to give to the latter the character of having been adjudicated for the purpose of interposing the exception mentioned in number 2 of article 666 of the Law of Criminal Procedure in force, if it be not shown that in the prior action a final decision was rendered either upon the character of the acts which give rise to the institution of the cause, or on the participation which the accused may have had therein. (*Decision of June 25, 1885.*)

As the Supreme Court has declared in a decision of February 24, 1880, the plea of *res judicata* in a criminal action must be based upon a prior final decision rendered in the penal order by a court of competent jurisdiction, which declaration is in accordance with the spirit and letter of our former laws and with the doctrine which is required by the condition of *eadem causa petendi* in order that the principle of law *non bis in idem* may be applied, as the Supreme Court also declared in the same decision.

[c] With regard to the prescription, according to a declaration of the Supreme Court in a decision of October 19, 1877, the declaration of the prescription of a crime or offense interests the guilty person primarily, he receiving the benefit arising from this declaration, for which reason he can not be deprived of an acquired right not lost by his default or by reason of other causes attributable to his acts. That is to say, when the prescription takes place when proceedings are suspended through no fault of his.

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5. The lack of administrative authority to conduct proceedings, in cases in which it is necessary in accordance with the constitution and special laws.[a]

ART. 667. The exceptions mentioned in the foregoing article may be pleaded within the period of three days from the date of the delivery of the record for the classification of the acts.

ART. 668. The person making such plea shall attach thereto the documents tending to prove the facts on which he bases the same, and should they not be in his possession, he shall designate in a clear and specific manner the archives or office where they may be, requesting the court to call for the originals or transcripts thereof as may be proper of the proper person.

He shall also present as many copies of the plea and of the documents as there may be representatives of the parties to the cause. Said copies shall be served on the same day they are presented, the secretary making a record of such service.

ART. 669. The representatives of the parties to whom the said copies may have been delivered shall make answer within a period of three days, also accompanying the documents upon which they base their contentions, should they have them in their possession, or designating the archives or office in which they may be found, requesting in such cases the court to call for the same in the manner stated in the foregoing article.

ART. 670. Upon the expiration of the said period of three days the court shall call for the documents or not, as it may consider them necessary or not necessary for the decision of the issue.

If the documents be not presented or the designation of the place where they may be found be not made, the exception pleaded shall not stay the proceedings.

ART. 671. If the court should grant the request for the documents, evidence shall be received upon the plea for such period as may be necessary, not exceeding eight days.

The court shall order in the same decision that the proper communications be directed to the chiefs or persons in charge of the archives or office in which the documents may be, specifying whether the originals or transcripts are to be forwarded.

ART. 672. If transcripts of the documents are to be transmitted, the parties shall be informed of their right to proceed to the archives or office, in order to indicate the part of the document to be transcribed, if a full transcript should not be necessary, and in order to be present at the comparing thereof.

In proceedings upon preliminary exceptions the evidence of witnesses shall not be admitted.

ART. 673. Upon the termination of the period for the admission of evidence, the court shall immediately set a day for the hearing, at which the counsel of the parties may make any statements they may deem proper, should the latter so request.

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[a] The precept of article 77 of the Constitution, providing that a special law will determine the cases in which administrative authority is to be required in order to institute proceedings, has not as yet been carried out. In the island of Cuba, where such authorization has been required, it was declared unnecessary, and finally abolished by royal order of May 6, 1881, until the publication of the law mentioned in the aforesaid constitutional precept.

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ART. 674. Upon the day following the hearing, the court shall render a decision upon the questions submitted.

If one of them should be a declinatory plea, the court shall decide the same before the others.

When it considers it proper, it shall order the record sent to the court or judge considered competent, and shall abstain from passing upon the other questions.

ART. 675. If any of the exceptions included under numbers 2, 3, and 4 of article 666 is sustained, an absolute dismissal of proceedings shall be had, and an order shall issue for the release of the person or persons accused, not be imprisoned for another cause.

ART. 676. If the court should not consider the declinatory plea sufficiently justified, it shall overrule the same, confirming its jurisdiction to take cognizance of the crime.

Should the court not consider any other plea well taken, it shall simply overrule the same and order the cause continued, according to the stage of the proceedings.

An appeal for annullment of judgment lies from a decision upon a declinatory plea and from one sustaining the second, third, and fourth exceptions of article 666. There shall be no remedy whatsoever against a decision overruling the last-named exceptions, without prejudice to the provisions of article 678.

ART. 677. If the court should consider an exception based upon a lack of authority to institute proceedings to be well taken, it shall order this defect cured at once, the cause being suspended in the meantime, which shall be continued according to its status as soon as the authority is granted.

If said authority should be denied upon the request therefor, all the proceedings had shall be void and an absolute dismissal of the cause shall be entered.

There shall be no remedy whatsoever against a decision upon this exception, and the provisions of the second paragraph of the foregoing article shall be observed.

ART. 678. The parties may again plead at the oral trial as a means of defense such preliminary exceptions as may have been overruled, excepting declinatory pleas.

ART. 679. If the exceptions pleaded should be overruled, the cause shall again be referred for a period of three days to the party pleading the same for the purposes mentioned in article 649.

TITLE III.—HOLDING OF THE ORAL TRIAL.

CHAPTER FIRST.—*Publicity of the arguments.*

ART. 680. The arguments at the oral trial shall be public, under pain of nullity.

Nevertheless, the presiding judge may order that the proceedings be held behind closed doors when necessary for reasons of morality or public order, or the respect due to the person offended by the crime or to his family.

To promulgate such an order, the presiding judge, either at his own instance or on motion of the accusers, shall consult the court, which shall deliberate in secret, rendering its decision setting forth its reasons, against which there shall be no remedy.

ART. 681. After the reading of this decision all persons present shall leave the court room.

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The persons injured by the crime, the accused, the private accuser, the civil plaintiff, and the respective counsel are excepted.

ART. 682. The secrecy of the debates may be ordered before the beginning of the trial or at any stage thereof.

CHAPTER II.—*Powers of the presiding judge of the court.*

ART. 683. The presiding judge shall direct the debates, seeking to prevent impertinent discussions and those not tending to the establishment of the truth, without curtailing thereby the liberty necessary for counsel to conduct the defense.

ART. 684. The presiding judge shall have all the powers necessary to preserve or reestablish order at the proceedings, and maintain the respect due the court and other public authorities, being permitted to correct at once, by the imposition of a fine of not less than 62.50 nor more than 625 pesetas, violations which do not constitute a crime or to which a correctional penalty is not affixed by law.

The presiding judge shall call all persons to order who disturb it, and may oblige them to leave the court room should he consider it proper, without prejudice to the fine referred to in the preceding article.

He may also order that any person be arrested at once who shall commit an offense during the session, holding such person subject to the orders of the competent court.

All persons present at the oral trial, whatever be the class to which they belong, without excluding the military, are subject to the disciplinary jurisdiction of the presiding judge. Should they disturb order by an act constituting a crime, they shall be expelled from the court room and turned over to the proper authority.

ART. 685. Every person questioned or addressing the court must rise when doing so.

The prosecuting officials, the counsel of the parties, and the persons whom the presiding judge may exempt from this obligation for special reasons are excepted.

ART. 686. Demonstrations of approval or of disapproval are prohibited.

ART. 687. If the accused shall disturb order by improper conduct, and shall persist therein, notwithstanding the warnings of the presiding judge and the admonition of being removed from the court, the court may decide upon his expulsion for a certain period or during the entire proceedings, which shall continue during his absence.

CHAPTER III.—*Manner of taking evidence at the oral trial.*[a]

SECTION FIRST.—*Confession of the persons accused and persons civilly liable.*

ART. 688. Upon the day fixed for the beginning of the sittings the exhibits collected shall be brought to the court room, and the presiding judge at the proper moment shall declare the court in session.

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[a] May the *Ponente*, with the consent of the presiding judge, address questions to the accused, the witnesses, or the experts at an oral trial?

"This case has not been provided for by law, but the undersigned is of opinion that there is no obstacle to a decision in an affirmative sense, provided that the

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If the cause to be heard should involve a crime for the punishment of which the imposition of a correctional penalty is requested, the presiding judge shall ask each of the accused whether he pleads guilty to the crime charged against him in the written classification and civilly liable for the restitution of the thing or the payment of the amount fixed in said classification by reason of losses and damages.

ART. 689. If there should be in the cause, in addition to the classification of the public prosecutor, another of the private complainant, or several classifications of complainants of this character, the accused shall be asked whether he pleads guilty to the crime according to the most serious classification and civilly liable for the highest amount fixed.

ART. 690. If there be more than one crime charged against the accused in the written classification, the same questions shall be put to him with regard to each.

ART. 691. Should there be more than one accused person, each shall be interrogated upon the participation charged against him.

ART. 692. If any other person be charged with civil liability in the classification, he shall also appear before the court and shall declare whether he agrees to the conclusions of the classification which relate to him.

ART. 693. The presiding judge shall clearly and precisely put the questions mentioned in the preceding articles, requiring a categorical answer.

ART. 694. If there should be but one person accused in the cause, and he shall answer affirmatively, the presiding judge of the court shall ask his counsel whether he considers the continuation of the oral trial necessary. If the latter should answer negatively, the court shall proceed to pronounce sentence in the manner stated in article 655.[a]

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presiding judge does not object to said questions, he being the only one authorized to direct the discussion and the evidence, and who may without restriction grant or refuse this privilege in any case." (*Report of the fiscal of the Supreme Court of September 15, 1883, number 48.*)

When an accused person states his agreement with the conclusions and the request of the accusation, there is a settlement of the complaint, and evidence should not be taken, or arguments made, or the action continued.

But when this does not occur the obligation of the contending parties to offer and receive all evidence which may be pertinent in the trial is unavoidable to such an extent that if the court should observe any dereliction on this point it could and even should avail itself of the right which article 729 grants it in such case. (*Report of the fiscal of September 15, 1883, number 52.*)

As the Supreme Court has decided, the declaration of the accused is one of the means of proof which the law of criminal procedure allows; and if this pertinent evidence shall have been submitted in due time, and the proper protest having been made at the proper time, the rejection thereof, even though it be limited, on account of the evidence having been admitted as pertinent, but confining the declaration of the accused to the provisions of article 688 of the law of procedure, an essential formality of the action is violated. (*Decision of January 28, 1884.*)

See notes to article 729 upon the question as to whether the accused can be questioned at the oral trial.

[a] In a decision of March 12, 1884, the Supreme Court declared that a sentence which, notwithstanding the agreement of the accused and his counsel with the accusation which classified the crime charged as simple theft, with the generic aggravating circumstance of breach of trust, condemns the accused as guilty of domestic theft, or committed with a gross violation of trust, in accordance

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ART. 695. Should he confess his criminal, but not his civil liability, or if in accepting the latter he should not agree to the amount fixed in the classification, the court shall order that the trial continue.

But in the latter case the arguments and the production of evidence shall be confined to the question relating to the civil liability which the accused may not have accepted in accordance with the conclusions of the classification.

Upon the termination hereof, the court shall pronounce sentence.

ART. 696. If the accused should not plead guilty to the crime charged to him in the classification, or his counsel should consider the continuation of the trial to be proper, it shall be proceeded with.

ART. 697. Should there be more than one person accused in the same cause, the proceedings described in article 694 shall be had if all plead guilty to the crime or crimes charged against them in the written classifications and acknowledge the participation charged against them in the conclusions, unless their counsel should consider the continuation of the trial necessary.

If any of the persons accused should not plead guilty to the crime charged against them in the classification, or their counsel should consider the continuation of the trial to be necessary, the provisions mentioned in the foregoing article shall be observed.

If the dissent should be with regard to the civil liability only, the trial shall continue in the manner and for the purposes mentioned in article 695.

ART. 698. The trial shall also continue when the person or persons accused shall refuse to answer the questions put to them by the presiding judge.

ART. 699. A like procedure shall be observed when at the *sumario* it shall not have been possible to establish the existence of the *corpus delicti* when, the crime having been committed the former must exist, even though the person or persons accused and their counsel shall have signified their agreement.

ART. 700. If the person or persons accused should have confessed their liability in accordance with the conclusions of the classification,

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with article 533 of the Penal Code, without having made use of the right granted by article 733 of this law, incurs the breach of form of number 3 of article 912.

When there is only one accused person in the cause upon which the oral trial is to be held, if the former should answer affirmatively to the question put to him at the beginning of the proceedings by the presiding judge of the court as to whether he pleads guilty to the crime charged against him in the written classification, and his counsel should not consider the continuation of the trial to be necessary, said court, in accordance with the provisions of article 694 of the law of criminal procedure, must thereupon pronounce sentence in the terms mentioned in article 655.

In accordance with the clear context of this article, if the penalty requested by the accusing parties in the written classifications should be of a correctional character, the court shall pronounce the proper sentence, according to the classification mutually accepted by the former and the accused, and a penalty higher than that requested can not be imposed; therefore, the public prosecutor having charged the accused in his first classification with the crime of inflicting less serious injuries, according to which he considered that he deserved a correctional penalty, and at the beginning of the trial said accused having plead guilty to the crime and his counsel stated that the continuation of the trial was unnecessary, the court should have pronounced sentence without further proceedings, in accordance with the accepted classification, without imposing a higher penalty than that requested. (*Decision of September 25, 1885.*)

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and their counsel should not consider the continuation of the trial to be necessary, but the person charged only with civil liability shall not have appeared before the court, or in his declaration should not have agreed to the conclusions of the written classification referring to them, the provisions of article 695 shall be observed.

If, having appeared, he shall refuse to answer the questions of the presiding judge, the latter shall warn him that he will be considered as having confessed.

Should he persist in his refusal, he shall be declared as having confessed, and the cause shall be decided in accordance with the provisions of article 694.

The same shall be done when the accused, after having confessed his criminal liability, shall refuse to reply as to his civil liability.

SECTION SECOND.—*Examination of witnesses.*

ART. 701. When the trial is to be continued, either on account of the disagreement of the accused with the accusation, or because a crime is involved for the punishment of which a corporal penalty has been requested, the proceedings shall be as follows:

The clerk shall present a statement of the act which may have given rise to the institution of the *sumario* and the day on which the latter was begun, stating furthermore whether the accused is imprisoned or temporarily at liberty, with or without bail.

He shall read the written classifications and the lists of experts and witnesses which may have been duly filed, stating the other evidence submitted and admitted.

Thereupon the taking of the evidence and the examination of the witnesses shall be proceeded with, beginning with that which may have been offered by the public prosecutor, continuing with that proposed by the other plaintiffs, and finally closing with that of the accused.

The evidence of each party shall be taken according to the order in which it may have been proposed in the proper instrument. The witnesses shall also be examined in the order in which their names appear in the lists.

The presiding judge, nevertheless, may change this order at the instance of a party, or even at his own instance, when he considers it advisable for a better elucidation of the facts, or for a more certain discovery of the truth.[a]

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[a] In causes involving assassination, homicide, or physical injuries inflicted with violence, the public prosecutor may submit as evidence the testimony of the physicians who may have performed the autopsy or cured the wounded person. (*Report of the fiscal of the Supreme Court of September 15, 1883, number 53.*)

Although this article does not require that the secretary shall furnish a statement in writing, it is advisable and especially prescribed by article 482 of the judiciary act. (*Report of the fiscal of the Supreme Court of September 15, 1883, number 44.*)

In accordance with a declaration of the Supreme Court in a decision of December 3, 1883, the questions of the presiding judge of the court and those of the accusers to the accused at the oral and public trial, if not prohibited by law, are not included among the causes which authorize an appeal for annulment in accordance with number 3 of article 911.

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ART. 702. All those who in accordance with articles 410 to 412, inclusive, are obliged to testify, shall do so by appearing before the court, with no exception other than the persons mentioned in numbers 1, 7, and 9 of article 412, who may testify in writing.

ART. 703. Notwithstanding the provisions of the foregoing article, if the persons mentioned in numbers 2, 3, 4, 5, 6, and 8 of article 412 should have had information, by reason of their office, of the acts in question, they may make a report thereon in writing which shall be read immediately before proceeding with the examination of the other witnesses.

The same shall be done by the members of the judiciary or by prosecuting officials included in such case.

ART. 704. Witnesses who are to testify at an oral trial shall remain, until called upon to give their testimony, in a suitable place, without communicating either with those who have testified already, or with any other person.

ART. 705. The presiding judge shall order that they enter to testify one by one in the order mentioned in article 701.

ART. 706. If a witness of more than 14 years of age is before the court, the presiding judge shall administer an oath to him in the manner prescribed in 434.

ART. 707. All witnesses not deprived of the use of their reason are obliged to testify to all they may know on the questions put to them, with the exception of the persons mentioned in articles 416, 417, and 418, in their respective cases.

ART. 708. The presiding judge shall question the witness upon the facts mentioned in the first paragraph of article 436, after which the party presenting him may put the questions he may deem proper. The other parties may also put to him such questions as they may deem proper, and which are pertinent, in view of his answers.

The presiding judge may himself, or at the instance of any of the members of the court, put such questions to the witnesses which he may deem proper, to secure the facts from their testimony.[a]

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[a] See number 42 of the report of the *fiscal* of the Supreme Court of September 15, 1883, in the note to article 656.

"Notwithstanding the clearness of the foregoing provision," says the *fiscal* of the Supreme Court in number 45 of the report of 1883, "a criminal audiencia has been in doubt as to whether a party presenting a witness must put to him all the questions which he may deem advisable, before the other parties can question him, or whether both parties shall have the right to put questions alternatively.

"The matter is of little importance in the opinion of the undersigned, who is of opinion that the witness can give his testimony in either manner, as they are both equally legal and proper.

"It appears to him that, in a larger number of cases, an alternative form of questions by the parties will give to the answers of the witnesses greater clearness and precision, as is the case when an answer having been made to a question put by a party upon a matter, the other parties request explanations upon said point.

"But this is no obstacle to the witness being examined indiscriminately by the parties before he concludes his testimony, reserving the preference which the person who presented said witness has in making said examination.

"At any rate, in treating of evidence, it is a rudimentary juridical principle that the greatest liberty be allowed the parties in taking the same, within the limits which the laws may have fixed."

Article 708 of the law of criminal procedure gives to the parties interested in a criminal cause the right to address to the witnesses for the prosecution at an

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ART. 709. The president shall not permit the witness to answer any captious, suggestive, or impertinent questions or cross-questions.

An appeal for annulment of judgment lies from a decision upon this point at the proper time, if the corresponding exception be noted at once.

In such case the clerk of the court shall enter upon the record the question or cross-question verbatim which the presiding judge did not permit to be answered.[a]

ART. 710. Witnesses shall indicate the grounds for their statements; and should they be from hearsay, they shall state the origin of the information, designating the person who communicated the same to them by his name and surname, or the manner by which he is known.

ART. 711. Deaf-mute witnesses or those who do not know the Spanish language shall be examined in the manner prescribed in articles 440, the 1st paragraph of 441, and 442.

ART. 712. The parties may request that the witness identify the instruments and effects of the crime or any other exhibits.

ART. 713. At the confrontation of the witness with the persons accused, or of the witnesses with each other, the presiding judge shall not permit that any insults be offered or threats made, the proceeding being limited to the persons confronting each other making the charges and remarks which they may consider advisable in order to agree and discover the truth.

ART. 714. When the testimony of the witness at the oral trial does not substantially agree with his testimony at the *sumario*, the reading of the latter may be requested by any of the parties.

Thereupon the presiding judge shall request the witness to explain the difference or contradiction observed in his depositions.

ART. 715. When witnesses who have testified at the *sumario* appear also to testify upon the same facts at the oral trial, they may only be proceeded against as presumed authors of the crime of false testimony when said crime is committed at said trial.

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oral and public trial the questions which they may consider proper and which may be pertinent; and the presiding judge of a court in not allowing the cross-questions which the counsel for the accused may wish to put to a witness for the prosecution, committed the breach of form mentioned in the first number of article 911 of the law. (*Decision of March 7, 1884.*)

The fact of the presiding judge of a court having questioned at an oral trial the witnesses presented by one of the parties before said party shall have questioned them, upon other points than the circumstances mentioned in the first paragraph of article 436 of the law of criminal procedure, as article 708 prescribes, does not constitute any of the cases of breach of form specifically mentioned in articles 911 and 912. (*Decision of April 12, 1886.*)

[a] May the *ponente*, with the consent of the presiding judge, address questions to the accused, the witnesses, or the experts?

"Although this case has not been provided for by the law, the doubt must be decided in an affirmative sense, provided that the presiding judge does not object to said questions, he being the only one authorized to direct the arguments and evidence, and who may, without restrictions in any case, grant or refuse the use of this privilege." (*Report of the fiscal of the Supreme Court of September 15, 1883, number 48.*)

When the presiding judge does not permit the accused to answer some question, an appeal for annulment does not lie under the provisions of numbers 3 and 4 of article 911, because it is deduced by the connection of said article with articles 709 and 721, that the questions in reference are to be put to the witnesses. (*Decision of June 14, 1884.*)

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With the exception of the case mentioned in the foregoing paragraph the liability incurred by the witnesses may be enforced in all other cases in accordance with the provisions of the penal code.[a]

ART. 716. A witness who shall refuse to testify shall incur a fine of not less than 62.50 and not more than 625 pesetas, which shall be imposed at once.

If, notwithstanding such fine, he should persist in his refusal, proceedings shall be instituted against him as guilty of the crime of serious disobedience to the authorities.[b]

ART. 717. The testimony of authorities and officials of the judicial police shall have the weight of the testimony of witnesses, and shall be considered like the latter according to the rules of rational reasoning.

ART. 718. If the witness should not have appeared on account of inability, and the court should consider his testimony of importance for the success of the action, the presiding judge shall appoint one of the members of the same to go to the residence of the witness, should it be at the place where the trial is being held, in order that the parties may ask the questions which they may consider proper.

The secretary of the court shall make a record of the questions and cross-questions put to the witness, his answers, and the incidents occurring at the proceeding.

ART. 719. If the witness unable to appear at the proceedings should not reside at the place where they are held, letters rogatory or a mandate shall be issued for his examination before the proper judge, in accordance with the provisions contained in this section.

When the party or parties prefer that the questions or cross-questions be written, the presiding judge shall consent thereto if they are not captious, suggestive, or impertinent.

ART. 720. The provisions of the foregoing articles shall also apply to the case where the court orders the witness to testify or make any

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[a] The office of the *fiscal* of the Supreme Court having been consulted as to whether, in view of the text of this article, it would be proper to request the institution of proceedings against a witness who gave false testimony at a *sumario*, if the proceedings are dismissed before the trial is begun, the doubt was decided in an affirmative sense (*Report of September 15, 1884, seventh question*): "With regard to false testimony in a criminal cause which shall not have continued as far as the trial, no doubt is really possible, because no law has revoked or modified the provisions of the penal code upon the matter."

[b] Must the punishment of a fine always be imposed upon a witness who shall refuse to testify, and can proceedings in addition be instituted against him in accordance with the provisions of article 716 of the law of criminal procedure?

"In view of the importance which the evidence of witnesses generally has, the law has had cause to require of a witness that he state what he may know at the oral trial, and if he shall refuse to testify he incurs a fine, and if he shall insist in his refusal then proceedings may be instituted against him as the author of the crime of serious disobedience to the authority.

"Nevertheless, the conduct of a witness who voluntarily refuses to testify, deserving a correction and even an indictment, must not be confounded with that of a witness who pleads that he does not remember a fact, even after his deposition at the *sumario* has been read, and the court should in such case observe the questions put to him, his words, and all that may conduce to show that the matters or details upon which he is questioned have more or less escaped his memory.

"In the latter case the undersigned is of the opinion that the witness should not be included in the provision of article 716 of the said law." (*Report of the aforesaid office of September 15, 1883, number 46.*)

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investigation at a determined place beyond that where the hearing is held.

ART. 721. When any question is ruled out as captious, suggestive, or impertinent, in the cases of the three preceding articles, the appeal for annulment of judgment may be prepared in the manner prescribed in article 709.

ART. 722. Witnesses appearing to testify before a court shall be entitled to an indemnity, should they claim it.

The court shall fix the same, taking into consideration only the cost of the trip and the daily wage which the witness may have lost by reason of his appearance to testify.[a]

SECTION THIRD.—*Expert examinations.*

ART. 723. Experts may be challenged for the causes and in the manner prescribed in articles 468, 469, and 470.

The hearing and determination of the challenges must take place during the time intervening between the admission of the evidence submitted by the parties and the opening of the sessions.

ART. 724. Experts who may not have been challenged shall be examined together when they are to testify upon the same matters, and shall answer the questions and cross-questions put to them by the parties.

ART. 725. If in order to answer the same they shall consider any examination necessary, they shall make the same immediately in the court room of the said audiencia, if possible.

Otherwise the proceedings shall be suspended the necessary time unless other evidence can be taken while the experts make the examination.[b]

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[a] With regard to indemnities to witnesses, three doubts have arisen:

1. Whether the only witnesses entitled to an indemnity are those cited at the instance of the public prosecutor, or whether the witnesses of the other parties are also included.

"As the law does not make any distinction between witnesses presented by the prosecution and those presented by the parties with regard to the indemnity to which they are all entitled, it is impossible to introduce distinctions in practice upon this question."

2. If the witnesses entitled to an indemnity are day laborers only, or all witnesses, whatever be their social position or means of livelihood.

"Saying, as the law does in a clear and final manner in the second paragraph of article 722, that in order to fix the indemnity only the cost of the trip and the wages lost by the witnesses shall be taken into consideration, any question tending to ascertain the social position of a witness entitled to an indemnity appears superfluous."

3. Whether witnesses living beyond the place of the trial are to be indemnified as well as those residing in the same, as the expenses or damages which the idea of an indemnity involves are not caused simply by the trip.

"The aforecited article makes a clear distinction between travelling expenses and the wages lost. Thus, when both are present, they must necessarily be cumulative, and payment for one of said causes may be made when only the one cause is present. (*Circular of the office of the fiscal of the Supreme Court of April 4, 1884.*)

[b] From the provisions of this article and the character of the evidence of experts, it is deduced that the experts can not be refused the data and information which they may deem necessary in order to give the opinion or report demanded of them, even though it should be necessary to suspend the session therefor, as prescribed by said article. (*Decision of March 9, 1885.*)

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SECTION FOURTH.—*Documentary evidence and ocular inspection.*

ART. 726. The court shall examine in person the books, documents, papers, and other exhibits which may contribute to an elucidation of the facts or to a more certain investigation of the truth.

ART. 727. For the ocular inspection, should it not have been held before the opening of the session, if the place to be inspected be situated at the seat of the court, it shall adjourn to said place with the parties, and the clerk shall make a record of the place or thing inspected, embodying therein the remarks of the parties and any other incidents which may occur.

If the place should be situated without said seat, such member of the court as the presiding judge may designate shall proceed to the same with the parties, the proceedings being had in the manner established in the preceding paragraph.

The provisions of Title 5, Chapter 1, of the second book shall be observed in all other matters, in so far as necessary.

SECTION FIFTH.—*Provisions common to the four preceding sections.*

ART. 728. No other evidence can be taken than that proposed by the parties, nor may any other witnesses be examined but those included in the lists presented.[a]

ART. 729. The following matters are excepted from the provisions of the preceding articles:

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[a] What proceedings had at the *sumario* must be had again at the oral trial, and in what proceedings does a reading thereof suffice at said trial?

"Article 730 of the Law of Criminal Procedure establishes that, at the instance of anything of the parties, such proceedings had at the *sumario* may be read, which, for reasons beyond the control of the said parties, can not be reproduced at the oral trial.

"As professional examinations can not be repeated in causes involving physical injuries and death, it is evident that a reading of the results thereof only can take place. This is not an obstacle to the parties litigant requesting, together with the taking of such other evidence which they may be entitled to request, the statement which may appear pertinent of the physicians conducting the examinations, and which, in their judgment, may throw light upon questions arising from said examinations.

"With regard to this point, it is necessary to consider the statements made with reference to the probatory value of the proceedings of the *sumario*, and which have been embodied in the fifty-second instruction of this office." (*Report of the fiscal of the Supreme Court of September 15, 1883, number 49.*)

The substitution of any witnesses included in the lists for different ones is not admissible, because this article prohibits the examination of witnesses other than those not included in the lists presented. (*Decision of May 1, 1884.*)

After the oral trial has begun, the investigation which is the subject of the *sumario* is not proper, as only such evidence shall be taken during the said trial as is presented in the respective written classifications. (*Decision of July 4, 1884.*)

The ruling out of some evidence or specific questions to witnesses can not produce the nullity of an action, if thereby the presentation of such evidence as should and must be considered pertinent on account of its influence upon the result of the cause is not prevented, necessarily considering the state in which it is produced and that in which it is rejected. (*Decision of December 29, 1884.*)

The law does not authorize the reading or the presentation of documents at the trial, at which only such evidence shall be heard as has been proposed in due time, unless the court shall consider other evidence admissible by reason of its influence in weighing the probatory value of the testimony. (*Decision of October 19, 1885.*)

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1. The confrontation of the witnesses with each other or with the accused, or the latter with each other, which the presiding judge may order at his own or at the instance of any of the parties.

2. The taking of evidence not submitted by any of the parties which the court may consider necessary for the verification of any of the acts the subject-matter of the written classification.

3. The taking of evidence of any kind which the parties may submit at the trial for the purpose of proving some circumstance which may bear upon the probatory value of the deposition of a witness, if the court should consider the same admissible.[a]

ART. 730. The proceedings had at the *sumario*, which for reasons beyond the control of the parties can not be reproduced at the oral trial, may also be read at the instance of any of them.

ART. 731. The court shall take the measures necessary to avoid that accused persons enjoying temporary liberty absent themselves, or fail to appear at the sittings of the court from the time they begin until sentence is pronounced.

CHAPTER IV.—*The accusation, the defense, and the sentence.*

ART. 732. After the evidence has been taken the parties may amend the conclusions contained in the written classifications.

In such case they shall formulate the new conclusions in writing, and shall deliver the same to the presiding judge of the court.

The conclusions may be prepared in an alternate form, according to the provisions of article 653.[b]

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[a] In connection with the application of the provisions of this article, the Supreme Court stated in a decision of June 30, 1883, that as the law permits the confrontation of the accused and of the latter with the witnesses, it is obvious that it also permits that the matters which are to be the subject of the confrontation be proposed to the accused, and that such questions be put to them as may tend to establish the truth, without there being any provision prohibiting that the latter be made, but on the contrary article 385 of the said law authorizes the judge to take as many depositions of the accused as he may consider advisable; and in another decision of March 13, 1884, it declared that an appeal for annulment of judgment lies on account of the refusal to permit a confrontation between the accused and a witness requested at the time of the trial:

"Considering that the confrontation of the witness with the accused is pertinent, unless there should exist other means sufficient to decide the questions, whatever be the result of the former, which reasons the Chamber should have stated as a basis for its refusal.

"Considering that on account of the nonexistence of motives in the present case which would make the confrontation improper, it is impossible to sustain the legality of the refusal, and, therefore, there exists a breach of procedure."

The additional taking of evidence requested by the accused in a petition presented after a day has been set for the beginning of the trial, is not proper, not having been presented in due time and form nor being included in any of the exceptional cases provided for in article 729 of the Law of Criminal Procedure.—*Decision of March 17, 1885.*

[b] In a decision of January 28, 1884, the Supreme Court declared that a sentence which condemns for the crime which is the subject of the classification does not punish one more grave than that of the accusation, even though the *fiscal* shall have requested the acquittal of the accused at the time of the trial, basing his request upon the fact that there do not exist sufficient proofs for conviction, weighing them differently from the chamber, which is not obliged to subject itself in this case to the opinion of the *fiscal.*

See number 40 of the report of the *fiscal* of the Supreme Court of September 15, 1883, in the note to article 650.

The question as to whether a court can condemn an accused person undergoing trial if no definite accusation has been formulated, is of a character essentially

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ART. 733. If, judging by the result of the evidence, the court should hold that the act to be proved has been classified with manifest error, the presiding judge shall employ the following formula:

Without prejudging the final decision upon the conclusions of the accusation and the defense, the court wishes that the prosecuting official and the counsel for the accused (or the counsel of the parties if there be more than one) *inform him as to whether the act which may be proved constitutes the crime of . . . or whether the circumstances which exempts from liability to which reference is made in number . . . of article . . . of the penal code is present.*

This exceptional power, which the court shall use with moderation, does not extend to causes which involve crimes which can only be prosecuted at the instance of a party, nor is it applicable to the errors which may have been committed in the written classifications, either with regard to the weighing of extenuating and aggravating circumstances, or to the participation of each of the persons accused in the execution of the public crime, the subject-matter of the action.

If the prosecuting official or any of the counsel for the parties shall state that they are not sufficiently prepared to argue the question proposed by the presiding judge, an adjournment shall be taken to the following day.[a]

ART. 734. When the time for argument arrives, the presiding judge shall allow the prosecuting official to speak, if he be a party to the cause, and afterwards the counsel for the private accuser, if there be one.

In their arguments they shall state the acts which they consider to be proved in the cause, their legal classification, the participation

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of procedure, and the second chamber of the Supreme Court has no jurisdiction to decide it, in accordance with a decision of January 17 and 20, 1887; but such is not the case when the sentence pronounced imposes the extreme penalty, because then said chamber may consider all the motives which vitiate the sentence, for a violation of law as well as for a breach of form, and decide whether the absence of an accusation places the sentence within the provisions of number 3 of article 912.

[a]As the Supreme Court declared in a decision of September 23, 1884, when the *fiscal* modifies his conclusions at the trial and considers that the crime is less grave than he qualified it therein, a court which condemns a criminal in accordance with the graver classification without availing itself of the privilege granted by article 733, incurs the breach of form of number 3 of article 912; and a sentence condemning a criminal when the *fiscal* has modified his conclusions at the trial, requesting an acquittal on account of the acts prosecuted not constituting a crime, incurs the same breach, provided the court has not availed itself of the privilege granted by the said article 733.

When the court avails itself of the privilege granted it by article 733, and the correctional penalty requested by the accusation is not proper, according to the classification accepted, even though the accused and his counsel agree with the former, the sentence may decree another penalty in accordance to law, first ordering the continuation of the trial. *Decision of December 15, 1884.*)

Even though the prosecuting official in the written classification should request a penalty for the person undergoing trial, if at the time of the trial he modifies his conclusions to the effect that the damage caused was casual and that the acts involved do not constitute a crime, and therefore recommends the absolute acquittal of the accused, an audiencia which condemns the latter as the author of the crime mentioned in the written conclusions, without making use of the privilege granted it by article 733 of the law of criminal procedure, incurs the breach of form referred to in number 3 of article 912 of the said law, as it punishes a crime which has not been the subject of an accusation. (*Decision of December 26, 1884.*)

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therein of the accused, and the civil liability which may have been incurred by them or by other persons, as well as the things which may be the object thereof, or the amount at which it should be fixed, when they or their representatives also exercise a civil action.

ART. 735. The presiding judge shall thereupon permit counsel for the civil plaintiff to speak, if there be any, who shall confine his argument to the points relating to the civil liability.

ART. 736. Thereupon the counsel for the persons accused shall be allowed to speak, and then the persons civilly liable, should they not be represented by the same counsel.

ART. 737. The arguments of the counsel of the parties shall relate to the conclusions which may have been definitely formulated, and in a proper case to the proposition of the presiding judge of the court in accordance with the provisions of article 733.

ART. 738. After these arguments the parties shall only be permitted to rectify the facts and their views.

ART. 739. Upon the conclusion of the arguments for the prosecution and defense, the presiding judge shall ask the persons accused whether they have anything to state to the court.

Any person answering affirmatively shall be allowed to speak.

The presiding judge shall take care that the persons accused, in their addresses, shall not offend good morals, nor fail in the respect due the court, nor in the proper consideration to all persons, and that they confine themselves to what may be pertinent, otherwise silencing them.

ART. 740. After the counsel for the parties and the persons accused in a proper case have spoken, the presiding judge shall declare the trial concluded and ready for sentence.

ART. 741. The court shall pronounce sentence within the period fixed in this law, considering according to its conscience the evidence submitted at the trial, the arguments of the prosecution and the defense, and the statements of the persons accused.[a]

ART. 742. All the questions which may have been the object of the trial shall be decided in the sentence convicting or acquitting the persons accused not only as to the principal crime and those connected therewith, but also as to the incidental offenses which may have been heard in the cause, but the court can not herein employ the formula of a dismissal of proceedings as to those of the accused whom it holds it should not condemn.

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[a] The sentencing court can not and must not consider declarations not made at the oral and public trial. (*Decision of December 13, 1888.*)

An appeal for annulment of judgment never lies from the consideration of the evidence, whether relating to the existence of this or that crime, or to the criminality of the person against whom a greater or lesser participation is charged, because in addition to not being specifically included among the cases enumerated in article 849, it is not possible to charge any legal infraction, when the legislator has left absolutely to the conscience of the judge such consideration according to the literal and specific context of article 741. (*Decision of January 17, 1884.*)

According to article 741 of the said law, the sentencing court, in order to render its decision, must only conscientiously weigh the evidence taken at the trial, the arguments of the prosecution and defense, and the statements of the accused themselves; but if he considers it advisable to verify some fact included in the written classifications, he has powers to elucidate it in accordance with number 2 of article 729. (*Decision of September 20, 1886.*)

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All questions relating to the civil liability which may have been the subject-matter of the action shall also be decided in the sentence.[a]

ART. 743. The clerk of the court shall make a record of each sitting held, and shall state therein succinctly everything important which may have occurred.

The record shall be read at the end of the session, such corrections as the parties may demand being made therein, if the court shall at the time consider them proper.

The record shall be signed by the presiding judge and members of the court, the prosecuting official, and counsel of the parties.[b]

CHAPTER V.—*Suspension of the oral trial.*

ART. 744. After the oral trial has been begun it shall be continued the number of consecutive sessions as may be necessary until its conclusion.

ART. 745. Notwithstanding the provisions of the foregoing article, the presiding judge of the court may suspend the opening of the ses-

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[a] The doubt as to whether the oral trial should be held after the opening of the same has been moved and decreed if no grounds upon which to formulate an accusation should be found, has been decided negatively, because a dismissal of proceedings can take place only before the opening of the trial, after the conclusion of the investigation; it is useless, therefore, to seek analogies between the precepts of this article and those of article 655. (*Circular of the presiding judge of the Supreme Court of July 14, 1884.*)

On the occasion of the application of the provisions of this article, the Supreme Court declared that the sentencing court can not and should not consider declarations not made at the oral and public trial (*decision of December 13, 1883*); and that it is unchangeable jurisprudence that a sentence acquitting or convicting decides all points which have been the subject of the acquisition and defense. (*Decision of April 5, 1884.*)

Neither article 742 of the law of criminal procedure nor any other article provides that the sentence shall set forth the reasons alleged by the counsel for the accused for not agreeing to the conclusions of the prosecuting official. (*Decision of October 8, 1885.*)

A violation of article 742 of the law of criminal procedure can not serve as a basis for an appeal for annulment of judgment for violation of law from a final sentence, of not being included in the cases specifically mentioned in article 849 of the said law. (*Decision of December 23, 1885.*)

A sentence which states in its *considerandos* that in the commission of a crime of assassination no extenuating circumstances were present does not contain a defect in its preparation because the same has not passed upon the extenuating circumstances pleaded by the appellant. (*Decision of April 12, 1886.*)

The absolute acquittal of the accused of the crime which has been the subject of the action, in accordance with the accusation of the public prosecutor, is not an obstacle to the sentencing court if it considers from the result of the proceedings that the said accused may be liable for an offense not incidental thereto, ordering on its own motion that the proper transcript be made, so that the respective municipal judge may take the proper steps without violating thereby this article nor incurring the breach of form referred to in number 2 of article 912 (*Decision of February 19, 1887.*)

[b] The doubt as to whether there should be embodied in the record which the secretary makes of each session of the oral trial the answers which the witnesses may give, has been decided negatively by the *fiscal* of the Supreme Court in his report of September 15, 1883, No. 56. In accordance with the foregoing report, in a decision of April 9, 1884, the Supreme Court established that although article 473 orders that the record of the trial must contain a succinct statement of all that may have taken place, this, nevertheless, does not grant authority to record the statements of the witnesses in full, because such proceeding would extend the time of the sessions uselessly.

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sions when the parties, for reasons beyond their control, should not have the evidence offered in their respective pleadings ready.[a]

ART. 746. A suspension of the oral action shall also be proper in the following cases:

1. When the court is obliged to decide during the arguments some incidental question which for any sufficient cause can not be decided then and there.

2. When in accordance with this law the court or any of its members should be obliged to hold some proceeding beyond the place where the sessions are being held, and when this proceeding can not be had during the time intervening between two sessions.

3. When the witnesses for the prosecution and defense offered by the parties do not appear, and when the court considers their testimony necessary.

Nevertheless, the court may in such case order the continuation of the trial and the taking of the other evidence, and after this has been done suspend proceedings until the absent witnesses appear.[b]

If the failure of the witnesses to appear should be for the reasons stated in article 718, the procedure shall be in accordance with said article and the two following.

4. When any member of the court or the counsel of any of the parties should become suddenly ill to the extent of not being able to continue taking part in the trial, and can not be replaced without serious injury to the defense of the person interested.

The provisions of this number with regard to the counsel of the parties shall also apply to the prosecuting official.

5. If any of the persons accused be included in the case of the foregoing number to the extent of not being able to be present at the trial.

The suspension shall not be ordered for this cause until the physicians appointed by the court for the examination of the ill person have been heard.

6. When unexpected revelations or retractions produce substantial changes in the actions, making new elements of proof or some supplementary summary investigation necessary.[c]

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[a] Can the suspension of the term fixed for the opening of the sittings be ordered at the instance of the court on account of a lack of preparation of the elements of proof?

"Art. 747 of the Law of Criminal Procedure (says the *fiscal* of the Supreme Court in the thirteenth instruction of the report of 1886) decides this question in stating that in the first, second, fourth, and fifth cases of article 746 the court may at its own instance order the suspension, and in the other cases, among which is included the one in question, it shall order it, if proper, on motion of a party."

The oral trial must be suspended whenever the accused does not appear. (*Report of the fiscal of the Supreme Court of September 15, 1883, No. 57.*)

[b] If the witnesses for the prosecution should fail to appear at the oral trial would it suffice to read their testimony at the *sumario?*

Only when the testimony of a witness is not of importance, or it is not expected that it will give more light for the discovery of the facts, and as an extreme case the reading thereof may be resorted to, applying the provisions of art. 730 of this law. (*Report of the fiscal of the Supreme Court of September 15, 1883, No. 58.*)

[c] Although in accordance with the sixth case of art. 746 of the law of criminal procedure, when unexpected revelations or retractions produce substantial changes in the proceedings, necessitating new elements of proof or some supplementary summary investigation, the suspension of the oral trial will lie, the

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ART. 747. The court may order the suspension at its own instance in the 1st, 2d, 4th, and 5th cases of the preceding article. In the other cases it shall order the suspension, if proper, on motion of a party.

ART. 748. The decrees ordering the suspension shall state the time thereof, if possible; and what may be proper for the continuation of the trial shall be determined.

There shall be no remedy against these decrees.

ART. 749. When the suspension of the trial must be for an indefinite or too long a period by reason of the cases provided for in numbers 4 and 5 of article 746, the part of the trial already held shall be declared null and void, and citations shall issue for a new trial, to be held when the cause of the suspension disappears or when the persons who can be substituted are replaced.

The court may make a similar decision in the case of number 6, if the preparation of the elements of proof or the summary supplementary investigation should require some time.

Book IV.—SPECIAL PROCEEDINGS.

TITLE FIRST.—MANNER OF PROCEEDING IN THE TRIAL OF A SENATOR OR DEPUTY TO THE CORTES.

ART. 750. A judge or court who shall find grounds to try a Senator or Deputy to the Cortes by reason of a crime shall abstain from proceeding against him, if the Cortes should be in session, until the proper authority is obtained from the colegislative body of which he is a member.

ART. 751. If the Senator or Deputy to the Cortes should be a delinquent *in fraganti* he may be arrested and proceeded against without the authority referred to in the foregoing article, but the action taken must be communicated to the proper colegislative body within twenty-four hours following his arrest or the institution of proceedings.

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fact that the accused shall not have confessed at the oral trial his guilt of the crime charged to him in the classification and it having been declared in the *sumario* that he is the author of the document in which the crime is supposed to have been committed, is not an unexpected retraction, nor does it even imply a contradiction on the part of the accused, because the investigation of the act is one thing and its classification another. (*Decision of October 8, 1883.*)

In a cause for theft a day was fixed for the hearing, which it was necessary to stay on account of another hearing having been set by another audiencia in an action brought against the accused for the same crime. Upon the suspended hearing being had upon another day, the *fiscal* requested the suspension of the action in order that a certificate of the final sentence rendered in the other cause might be submitted, which petition was refused.

Upon interposing an appeal for annulment of judgment, the sentence was annulled:

"Considering that as prescribed by the said legal provision (art. 746), invoked as a ground for this appeal, the suspension of the action was proper, because the fact of the accused having been punished for the same crime by virtue of a final sentence recently rendered in another cause for theft, of which the public prosecutor did not have notice at the time, duly proven, produced a substantial change in the same with regard to the criminality of the accused.

"Considering, therefore, that the appeal lies as being included in the first case of art. 912 of the said law, by reason of evidence having been rejected which was known to be pertinent, and which was proposed in due time and form, in view of its character." (*Decision of January 22, 1885.*)

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The proper colegislative body shall also be informed of a cause pending against a person who, while proceedings are pending against him, shall have been elected a Senator or Deputy to the Cortes.

ART. 752. If a Senator or Deputy to the Cortes should be indicted during a parliamentary recess the judge or court taking cognizance of the cause shall immediately inform the proper colegislative body thereof.

The same shall be done when a Senator or Deputy to the Cortes elect should have been accused before their meeting.

ART. 753. In any case the proceedings shall be suspended from the day the Cortes are informed, whether in session or otherwise, proceedings remaining in the condition in which they may be at that time until the proper colegislative body shall decide what it may consider advisable.

ART. 754. If the Senate or the Congress should refuse to grant the authority requested, the proceedings shall be dismissed with regard to the Senator or Deputy to the Cortes; but the cause shall continue with regard to the other persons accused.

ART. 755. The authority shall be requested in the form of a supplication, transmitting with the latter and in a confidential character a certified transcript of the charges against the Senator or Deputy, including the reports of the prosecuting official and the private petitions in which the authority may have been requested.[a]

ART. 756. The supplication shall be transmitted through the Colonial Minister.

TITLE II.—PRELIMINARY ACTION NECESSARY FOR THE PURPOSE OF ENFORCING THE CRIMINAL LIABILITY OF JUDGES AND JUSTICES.[b]

ART. 757. Every Spaniard not incapacitated to exercise a criminal action may institute the preliminary proceedings necessary to enforce the criminal liability of judges and justices for crimes committed in the exercise of their functions.

ART. 758. When the subject of the preliminary action should be any of the crimes of prevarication relating to unjust decisions, it can not be brought until after the termination of by a final sentence the litigation or cause giving rise to the proceeding.

ART. 759. If the subject of the preliminary action should be any of the crimes relating either to malicious delay in the administration of justice or to the refusal to pass judgment under any of the pretexts specified in the code, it may be brought as soon as the judge or court shall have rendered a decision refusing to pass judgment on account of the obscurity, insufficiency, or silence of the law, or after fifteen days have elapsed since the presentation of the last petition requesting the judge or court to pass upon or decide any cause, proceeding, or judicial demand which may be pending, without his having done so, nor stated in writing in the record a legal cause for not doing so.

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[a] By a decision of July 2, 1879, the Supreme Court declared that Parliament having refused to grant authority for proceeding against a Deputy or Senator, a decree of absolute dismissal rendered in the cause is proper.

[b] The preliminary proceedings are not necessary when they are at the instance of the public prosecutor. (*Decision of December 12, 1884.*)

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ART. 760. When the object thereof should be any other crime committed by the judge or court in the exercise of his functions, the preliminary action may be brought as soon as the crime is known.

ART. 761. The person injured by the judicial decision shall not be obliged to give any bond in order to bring an action against judges or justices.

By injured person is understood that person who is directly damaged or prejudiced by the crime.

ART. 762. He who shall not have been injured by the crime, on bringing the preliminary action shall give the bond which the court which is to take cognizance of the cause may fix, in order that such action may be heard and determined at his instance.

The provisions contained in Title IX of the second book of this law shall apply to all that relates to the bond.

ART. 763. An appeal for a stay and review of the proceedings shall lie to the second chamber of the Supreme Court from a decree requiring a bond and fixing the amount and character thereof, should such decree have been rendered by an audiencia.

Should it have emanated from the Supreme Court a petition for a review only shall lie.

ART. 764. The preliminary action shall be instituted in writing in the form of a complaint subscribed by an attorney.[a]

ART. 765. If the criminal liability which it is desired to enforce should be on account of any of the crimes of prevarication relating to unjust decisions, a certified copy of the unjust sentence, decree, or order shall be presented with the complaint.

Should this not be possible, the office or judicial archives in which the original proceedings may be shall be designated.

ART. 766. The complaint shall also state the proceedings of the cause of which transcripts may be necessary to prove the injustice of the sentence, decree, or order which gave rise to the preliminary action.

ART. 767. If the liability should be on account of any of the crimes referred to in article 759 of this law, there shall be attached to the complaint:

1. Copies of the documents presented after the expiration of the legal period, if fixed by law, for the decision of the judicial demand, proceeding, or causes pending, any of the persons interested requesting the judge or court taking cognizance thereof that he decide or pass upon them in accordance with law.

2. A certified copy of the decree or order issued by the judge or court overruling the petition on account of obscurity, insufficiency, or silence of the law, if a crime defined in the first paragraph of the article cited should be involved, or the crime included in the second paragraph of the same article; a certificate which establishes that the judge or court permitted fifteen days to expire after the presentation of the petition, or after the last petition, if more than one shall have been presented to him, without having decided or passed upon the proceedings or without having stated therein or notified the parties of the legitimate cause which prevented him from so doing.

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[a] Article 277 prescribes the requirements of a complaint.

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ART. 768. If the liability should be on account of any other crime committed by the judge or justice in the exercise of his functions, a document showing the commission of the crime, or in its absence a list of witnesses, prepared in the manner prescribed in article 656, shall be presented with the written complaint.

ART. 769. If the person bringing the preliminary action for any of the crimes mentioned in the foregoing articles should not be able to obtain the documents necessary, he shall present at least a certified copy of the notarial act executed for the purpose of establishing the fact that he requested them of the judge or court who should have furnished them or ordered their issue.

ART. 770. The court taking cognizance of the preliminary action shall order such transcripts made as may be requested, and in the case of the foregoing article shall order the judge or court refusing to issue the certificates to transmit the same within the period fixed, reporting at the same time what he may deem proper as to the reasons for his refusal to issue the transcript requested.

He shall also order the transcripts made which he may consider advisable, citing the complainant for the comparing of all which may be made, unless the transcript should be of some proceeding of the *sumario* not yet concluded, and not had with the intervention of the person instituting the preliminary action.

ART. 771. After the transcripts have been made they shall be attached to the record of proceedings, and shall be referred for examination to the complainant for a period of three days.

A transcript of a private character, to which reference is made in the preceding article, if the complainant be included in the case indicated, is excepted from the provisions of the foregoing paragraph.

If the record of proceedings should not be returned within said period, it shall be recovered on motion of the court on the first day of delay.

It shall afterwards be referred to the *fiscal* for a similar period, and after being returned a day shall be set for the hearing.

ART. 772. If witnesses are to testify, they shall be cited with the legal formalities, a day being set for their appearance.

The witnesses shall be examined in the manner prescribed in chapter 5, title 5, of the second book.

ART. 773. The prosecuting official, as well as the complainant, may state at the hearing what they may deem advisable with regard to what may appear from the documents composing the record, and, in a proper case, on the depositions of the witnesses examined, concluding by requesting the admission or rejection of the complaint interposed.

ART. 774. The court shall decide what it may deem just upon the day following the hearing.

ART. 775. If the complaint be admitted, an order shall issue to proceed with the *sumario* in accordance with the procedure established in this law, appointing, in accordance with the provisions of article 303, the justice of the chamber who is to conduct it, should it not be deemed advisable that the examining judge be of the territory within which the crime may have been committed, or any official of the judiciary in active service.

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The court shall also order the suspension of the judges or justices against whom the complaint may have been admitted, informing the Colonial Department thereof for the proper purposes.

ART. 776. If the complaint be rejected, the court shall tax the costs against the complainant, if the latter should not be the person injured by the alleged crime.

He shall also tax them against the person offended, if it shall appear that he has acted in bad faith or with evident malice.

ART. 777. Should the costs be taxed, the bond shall not be returned until they are paid, and should they not be paid within the period allowed therefor, they shall be enforced against the bond, the balance being returned to the person furnishing it.

ART. 778. Prosecuting officials shall not be subject to the foregoing provisions relating to bonds and costs when they bring any action of a criminal character against judges and justices.

TITLE III.—PROCEEDINGS IN CASES OF FLAGRANT CRIMES.

CHAPTER FIRST.—*Cases where these proceedings lie.*[a]

ART. 779. A flagrant crime shall be considered such crime which is being committed or has just been committed when the delinquent or delinquents are surprised.

As surprised in the act shall be considered not only a criminal taken at the moment of committing the crime, but also a person detained or pursued immediately after its commission, if the pursuit should last or not be discontinued until the delinquent places himself beyond the immediate reach of those pursuing him.

A delinquent *in fraganti* shall also be considered he who shall be surprised immediately after the commission of a crime with effects or instruments in his possession which permit of a strong presumption of his participation therein.

ART. 780. The procedure referred to in this title shall only apply to presumed criminals apprehended *in fraganti* who deserve correctional penalties, whatever be the degree to be imposed.

ART. 781. If the municipal judge, or the examining judge in a proper case, should be in doubt as to whether the crime deserves a correctional penalty, they shall request the opinion of the proper court, which, after hearing the prosecuting official, shall answer within four days after receiving the request.

ART. 782. In causes of this character, questions of jurisdiction raised between judges and courts of the ordinary jurisdiction shall be heard and determined according to the following rules:

If a court claims the cognizance of a cause when another court has already taken cognizance thereof, and there should be any doubt as to which is competent, should no agreement be reached after the first communication is exchanged on the subject, they shall place the facts without delay before the proper superior, in accordance with the provisions of article 20, by means of a statement setting forth grounds in order that such superior, after hearing the *fiscal* orally, may decide at once without further remedy what he may deem proper.

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[a] See Official Gazette P. R., No. 37, Feb. 12, 1899.

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In the meantime each court shall continue the proceedings begun.

If judges of examination differ as to the jurisdiction, the provisions of article 22 of this law shall be observed.

In any case, the examining judges within whose judicial district a crime may have been committed or triable acts should occur as a consequence thereof, shall take the proper steps, forwarding the same to the judge having jurisdiction of the principal crime.

ART. 783. Whenever a flagrant crime is involved, the officials of the judicial police shall inform the municipal judge thereof in towns which are not the seat of a judicial district, and also those in such seat, if the examining judge be absent.

In other cases they shall inform the judge of examination thereof directly.

ART. 784. The judicial authorities mentioned in the foregoing article shall respectively conduct the first steps of the *sumario* if it be a public crime, and on motion of a legitimate party, if it be a private crime.

The municipal judge in a proper case shall immediately inform the judge of examination of the act as soon as possible without prejudice to the continuation of the more urgent proceedings of investigation, and shall punctually carry out any order which said judge of examination shall issue to him.

Both the municipal judge and the examining judge shall furthermore comply with the provisions of article 308 of this law.

ART. 785. The authorities or officials to whom, according to this law, the taking of the first steps pertains, may order, in the case of a flagrant crime of injuries committed with violence, that the first physician found accompany them, and two, if there be that number, in order to furnish the proper assistance to the person injured if necessary.

The physicians called upon, even though it be only orally, who shall not consent to furnish the assistance mentioned in the foregoing paragraph, shall incur a fine of not less than 125 or more than 625 pesetas, unless they shall have incurred criminal liability by their disobedience.

ART. 786. Without prejudice to the provisions of article 354, the officials of the judicial police may prevent, in the case of a flagrant crime, that the persons found where the crime was committed depart therefrom.

They may also seize the effects found in said place until the judicial authority arrives, whenever there is danger that in failing to do so some evidence of the acts which have taken place may disappear.

They may also, in such case, immediately cause the appearance of the persons or take the effects mentioned in the foregoing paragraph before the municipal or examining judge.

ART. 787. The authorities and agents referred to in the foregoing articles may also call upon the assistance of the public force when necessary, for the discharge of the duties entrusted to them by this law.

The call for such services shall be made in writing, if the urgency of the case permits, and shall be addressed to the local chief of the force.

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CHAPTER II.—*Rules to which these proceedings must conform.*

ART. 788. The examining judge shall employ for the proof of the crime and the guilt of the presumed criminal the common and ordinary means which this law establishes, with the modifications contained in the following articles.

ART. 789. The examining judges shall avoid all proceedings the result of which, even in the case most favorable to the criminal, would not alter either the nature of the crime or the liability of the delinquents.

ART. 790. The examining judges, when several eyewitnesses are present, shall enter the testimony of the most important, and the examination in a proper case of the persons arrested, in a short record, which shall be subscribed by the judge, the secretary, the person arrested, and by the witnesses, should they be able to do so.

The judge may, if he considers it necessary, examine some witness apart from the others.

ART. 791. If the person arrested acknowledges that he has attained the age necessary in order to enforce against him in a proper case the criminal liability to its fullest extent, and if the examining judge should have no doubt upon this question, it shall not be necessary to produce his baptismal certificate in the cause if not necessary for the purpose of proving his identity.

ART. 792. If there be more than one accused person, the examining judge may order the preparation of the number of separate records which he may deem advisable to simplify and hasten the proceedings and not delay the punishment of those who are self-confessed or convicted.

ART. 793. The examining judge shall seek to terminate the *sumario* within eight days after the first step should it not be necessary to await the result of some injury or some essential proceeding.

The court shall carefully examine the reasons for any other delay in order to discipline the examining judge incurring the same without good excuse.

ART. 794. Upon the conclusion of the *sumario*, and after the record of the proceedings thereof has been forwarded to the court of competent jurisdiction, it shall be referred successively for a period of three days, to the parties, beginning with the prosecuting official, in order that they may make the classification of the crime.[a]

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[a] The doubt having arisen as to whether the word "parties," to which this article and article 796 refer, includes both the accusers and the defendants or only the former, the office of the *fiscal* of the Supreme Court in its fifty-ninth instruction of its report of September 15, 1883, is of the opinion that it relates only to the accusing parties.

This article in providing—says the Chief Justice of the Supreme Court in a circular of July 14, 1883—that the *sumario* be referred successively to the parties in order that they may classify the crime, refers only to the public prosecutor and the private accuser, if there be any, as these parties are the only ones who classify the crimes.

In view of the terms of art. 794 of the law of criminal procedure, can the public prosecutor request a dismissal of the proceedings when he deems it proper?

The terms of the said article give rise to said doubt, as it states that upon the termination of the *sumario* and its transmittal to the court of competent jurisdiction, it shall be referred successively to the parties, beginning with the public

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ART. 795. If the prosecuting official shall request the imposition of a correctional penalty, the accused shall be informed in order that he

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prosecutor, for a period of three days, in order that they may classify the crime.

The law has set out from the supposition that in cases in which in accordance with art. 779 proceedings upon a flagrant crime lie, there always exists a delinquent, and therefore the case has not been provided for if the person undergoing trial is not such delinquent.

But as notwithstanding this, although it may be seldom, the case is possible that said delinquency does not appear, to suppose then that the public prosecutor, if he believes that a dismissal of the proceedings is proper can not request it at once, signifies that the *sumario* must be returned to the examining judge in order that he may prepare it in accordance with the provisions applicable to ordinary cases, and that in this manner the provisions of articles 626 et seq. of said law may be complied with.

Thus, it must be granted that, when during the period of investigation, either the nonexistence of the crime or the lack of responsibility of the presumed criminal is proven, the public prosecutor will be obliged to request the application of the provisions of articles 637 and 641 of the law of criminal procedure in taking the action referred to in art. 794 of the said law. (*Report of the Fiscal of the Supreme Court of September 15, 1883, No. 60, and question No. 15 of that of 1877.*)

The question having been put to the aforesaid office as to whether, after the classification of the *fiscal* has been formulated, it must be served immediately and personally upon the accused, and that if the latter does not agree therewith the cause should then be referred to his counsel, or if, on the contrary, the cause should be delivered at once to the counsel, in order that they may act upon the conclusions of the *fiscal*, afterwards served upon the accused, it answered (*question 15 of the report of 1887*):

"The terms in which arts. 795 and 796 of the law of criminal procedure are drafted, decide the question to the effect that the classification of the *fiscal* must be served upon the accused in order that he may state whether he agrees therewith or not, and in the latter case the record shall be exhibited in the office of the secretary in order that the parties may propose the elements of proof of which they intend to avail themselves."

In accordance with the foregoing, the Supreme Court in a decision of November 9, 1883, in annulling another condemnatory one pronounced in a cause involving a flagrant crime, in which the *sumario* was referred to the *fiscal* and the classification of the latter was then served upon the accused, who interposed an appeal for annulment based upon No. 1 of art. 911, on account of not having been able to submit evidence, the *sumario* not having been delivered to him, stated that art. 794 grants to the parties equal rights, as in the case of art. 652, art. 656, prescribing that the evidence be proposed at the time of the classification, differing in this point from art. 794, which leaves this decision pending for the case mentioned in the third paragraph of art. 795, and in view of the provisions of said articles and without it being possible to grant to the prosecution more means or remedies than to the defense, the *sumario* must be delivered to the accuser as one of the parties to the action in order that he may make the classification within a period of three days, without this being in contravention of the provisions of the said paragraph, which can only refer to those who may have limited themselves to making a classification observing only the provisions of the said art. 794.

The precept of art. 794 of the law of criminal procedure in ordering that after the *sumario* has been transmitted by the judge of examination to the proper court it be referred successively to the parties, beginning with the public prosecutor, for the classification of the crime, grants to the former equal rights and places them in an identical situation with regard to he crime, as occurs also in the cases mentioned in articles 652 and 656 of said law; and as it is not possible to grant to the prosecution more means or ways nor place it in a more advantageous situation than the defence, it is absolutely necessary to deliver the *sumario* to the counsel of the accused, who is one of the essential parties to a criminal action, in order that within a period of three days, which is also allowed the prosecution, he may submit his written conclusions, without an obstacle thereto, being the provision of the second paragraph of art. 796, which can only refer to those who may have confined themselves to making the classification in view of the precepts of art. 794. (*Decision of January 15, 1884.*)

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may state whether he agrees or not thereto; in an affirmative case the court shall immediately pronounce the proper sentence, but can not impose a higher penalty than that to which he may have agreed. A sentence thus rendered shall close the proceedings, and no remedy whatsoever shall be admitted thereagainst.

If the person undergoing trial be a minor, it shall be necessary that his attorney and counsel also give his consent.

ART. 796. When the accused, or the counsel, in a proper case, should not agree to the penalty requested by the prosecuting official, or when the court is of opinion that the penalty requested is not the proper one according to the classification of the crime, but that a higher penalty should be imposed, it shall order the continuation of the trial.

The parties shall in such case be informed in order that within three days they may propose the elements of proof of which they intend to avail themselves, for which purpose the record shall be exhibited to them in the office of the recording clerk; and after the evidence has been submitted, the action shall subsequently continue according to the ordinary rules, but, nevertheless, the court must reduce the periods as much as possible.

If the prosecuting official should be of opinion that the penalty corresponding to the crime should be a corporal one, he shall so inform the court in order that the cause may be returned to the examining judge for a hearing and determination thereof according to the ordinary procedure.

ART. 797. The courts shall give preference to the hearing and determination of causes relating to flagrant crimes.

ART. 798. Immediately after the conclusion of the action the court shall assemble to deliberate and pronounce sentence, which must be made public the same or not later than the following day.

ART. 799. The result of the oral trial shall be recorded in an instrument which shall be subscribed by the members of the court, the prosecuting official, the counsel, and the secretary.

ART. 800. An appeal for annulment of judgment for a violation of law lies from the decision of the court, if at the time of the publication of the sentence the accused, his counsel, or the prosecuting official shall indicate that he desires to avail himself of this remedy.

Should such statement be made, the appeal shall be considered prepared by this act merely, and a true copy of the sentence shall be transmitted to the supreme court on the same day, the original being retained in the office of the secretary of the sentencing court.

An appeal for breach of form may also be interposed within two days following that of the last notice.

ART. 801. The admission, hearing, and decision of these appeals shall conform to the rules established in Title I, of the fifth book; but they shall be placed upon the calendar and heard before other appeals.

ART. 802. The Supreme Court shall render and publish the sentence in the form and within the period fixed in article 798.

ART. 803. After the sentence has been published by the Supreme Court the proper certified copy shall be issued to the sentencing court for its execution, an attested copy sufficient for the liquidation of the costs incurred and to determine the inversion of the deposit being retained.

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TITLE IV.—PROCEEDINGS UPON CRIMES OF CONTUMELY AND CALUMNY AGAINST PRIVATE INDIVIDUALS.

ART. 804. No complaint for acts of contumely or calumny against private individuals shall be admitted unless a certificate be presented showing that proceedings to effect a conciliation have been held with the complainant or that an unsuccessful attempt was made for this purpose.

ART. 805. If the complaint should be of an act of contumely or calumny committed during a judicial proceeding, it shall be necessary furthermore to show the authority of the judge or court before whom it was committed.

This authority shall not be considered sufficient proof of the charge.

ART. 806. If the act of contumely and calumny should have been committed in writing, the document containing the same shall be presented if possible.

ART. 807. When acts of contumely or calumny committed in writing are in question, when such writing is acknowledged by the person legally liable, and after it has been proven whether or not the publicity referred to in the respective article of the penal code has existed, the *sumario* shall be considered closed after the indictment of the defendant.

ART. 808. If verbal acts of contumely or calumny should be in question after the complaint has been presented, the examining judge shall cite the complainant, the defendant, and the witnesses who can testify as to the acts for an oral trial, setting a day and hour for the same.

ART. 809. The trial must be held within three days after the filing of the complaint before the examining judge of competent jurisdiction.

Should there be just cause established by a certificate of the secretary, the time for the holding of the oral trial may be extended to eight days.

ART. 810. Acts of contumely against public officials relating to matters concerning the exercise of their duties are excepted from the rules established in the three preceding articles, as well as calumny, when the accused state that they desire to prove before the oral trial the truth of the defamatory imputation or of the criminal act charged.

In either case the *sumario* can not be concluded until the complainant precisely and clearly specifies the acts and circumstances of the charge, in order that the accused may prepare his evidence for presentation at the oral trial. Should he not do so within the period which the judge may grant him, the *sumario* shall be considered terminated, taking into consideration his failure or omission in order that it may not prejudice the accused.

ART. 811. A person filing a complaint for an act of contumely or calumny must attach a copy of the complaint, which shall be served upon the defendant at the time of his citation for the trial.

ART. 812. Upon the holding of the trial on the day fixed and after the complainant has presented the proof of the acts constituting an oral act of contumely or calumny, the judge shall order what may be proper with regard to the trial of the defendant, terminating the *sumario* thereupon.

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ART. 813. No hearsay evidence shall be admitted in causes involving acts of contumely or calumny.

ART. 814. The absence of the defendant shall not stay the holding nor the decision of the case, provided he has been formally cited.

ART. 815. A record shall be made of each trial, the proceedings had being clearly and succinctly stated and signed by all persons present able to do so.

TITLE V.—PROCEEDINGS ON CRIMES COMMITTED THROUGH THE PRESS, ENGRAVINGS, OR OTHER MECHANICAL MEANS OF PUBLICATION.

ART. 816. As soon as a *sumario* is begun for a crime committed through the press, engravings, or other mechanical means of publication, the copies of the print or impression shall be seized wherever they may be. The plate of the latter shall also be seized.

Proceedings shall also be instituted at once to ascertain the real author of the writing or impression by the publication of which the crime may have been committed.

ART. 817. If the writing or impression shall have been published in a newspaper, whether in its text or on a separate sheet, depositions shall be taken of the director or editors of the former and of the head or manager of the typographical establishment in which the impression or engraving may have been done, for the purpose of ascertaining the author.

For this purpose the original shall be demanded of any of the persons in whose possession it may be, which person, if he does not place the same at the disposal of the judge, shall state the person to whom he may have delivered it.

ART. 818. If the crime should have been committed by means of the publication of a writing or of single impressions, the deposition mentioned in the foregoing article shall be taken of the head and employees of the establishment in which the printing or stamping was done.

ART. 819. If it should not be possible to ascertain the real author of the writing or impression, or if he can not be prosecuted on account of being a resident of a foreign country, or for any other reason specified in the penal code, the proceedings shall be brought against the persons subsidiarily liable in the order established in the proper article of the said code.

ART. 820. The confession of an alleged author shall not be sufficient to consider him as such, and prevent proceedings being instituted against other persons, if in view of his circumstances or of the crime there should be sufficient indications to lead to a belief that the person making the confession was not the real author of the writing or impression published.

But after a final sentence has been rendered against those subsidiarily liable, new proceedings can not be brought against the person principally liable, should he become known.

ART. 821. If during the course of the cause it shall appear that some person who, in the order established in the respective article of the penal code, should before the accused answer criminally for the crime, the proceedings shall be dismissed with regard to the latter and directed against the former.

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ART. 822. Only the printed copies of the writing or impression and the plate of the latter shall be considered as instruments or effects of crime.

ART. 823. After the printed matter, engraving, or other mechanical means of publication which may have served for the commission of the crime shall have been attached to the cause, and after the author or the person subsidiarily liable has been ascertained, the *sumario* shall be closed.

TITLE VI.—PROCEEDINGS FOR EXTRADITION.

ART. 824. The *fiscales* of audiencias and of the Supreme Court, each in his case and place, shall request the judge or court to recommend to the Government that it make a request for the extradition of persons accused or condemned by a final sentence when proper according to law.

ART. 825. In order that the extradition may be demanded or recommended, it shall be necessary that a warrant of commitment or final sentence shall have issued against the persons accused in reference.

ART. 826. Extradition can only be demanded or recommended:

1. Of Spaniards who, having committed a crime in Spain, shall have taken refuge in a foreign country.

2. Of Spaniards who, having made a criminal attempt in a foreign country against the external security of the State, shall have sought refuge in a country other than that in which they committed the crime.

3. Of foreigners who, being subject to trial in Spain, shall have sought refuge in a country not their own.

ART. 827. A request for extradition shall be proper:

1. In the cases specified in the treaties in force with the nation within whose territory the individual wanted may be.

2. In the absence of a treaty, in the cases in which extradition is proper according to written law or the law of custom in force in the territory of the nation of which the extradition is requested.

3. In the absence of the two preceding cases, when the extradition is proper, according to the principles of reciprocity.

ART. 828. The judge or court taking cognizance of the cause in which a criminal is undergoing trial who is absent in foreign territory shall have jurisdiction to demand his extradition.

ART. 829. The judge or court taking cognizance of the cause shall order at its own or at the instance of a party, in a resolution setting forth the reasons therefor, that the extradition be demanded from the moment that, on account of the stage of the proceedings and the result thereof, it may be proper in accordance with any of the numbers of articles 826 and 827.

ART. 830. An appeal lies from a decree ordering or refusing to order a demand for extradition, if said decree shall have issued from a judge of examination.

ART. 831. The request for extradition shall be made in the form of a supplication addressed to the Colonial Department.

The case is excepted in which, by a treaty in force with the nation within whose territory the person accused may be found, the extradition can be requested directly by the judge or court taking cognizance of the cause.

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ART. 832. With the supplication or communication to be issued, according to the provisions of the preceding article, a certificate shall be transmitted containing literally the decree of extradition and an abstract of the demand or report of the prosecuting official in which it shall have been requested and all the proceedings in the cause necessary to justify the property of the extradition, in accordance with the proper number of article 826, upon which it is based.

ART. 833. When the extradition must be requested through the Colonial Minister, the supplication and certificate shall be transmitted to him through the presiding judge of the respective audiencia.

If the court taking cognizance of the cause should be the Supreme Court or its second chamber, the documents mentioned shall be transmitted through the presiding judge of said court.

TITLE VII.—PROCEEDINGS AGAINST ABSENT CRIMINALS.

ART. 834. A person accused who shall not appear within the period fixed in the requisitions or who can not be found and brought before the judge or court taking cognizance of the cause shall be declared in default.

ART. 835. The following shall be called and sought for by requisition:

1. An accused person who, when notice is sought to be served upon him of any judicial decision, should not be found at his domicile by reason of his absence, if his whereabouts be unknown, and an accused person not having a known domicile. The person in charge of the service shall question the person upon whom said service is to be made, in accordance with the provisions of article 172 of this law, as to the whereabouts of the person accused.

2. He who shall have escaped from the institution in which he was detained or imprisoned.

3. He who, enjoying temporary liberty, should fail to appear before the court upon the day fixed or when he is called.

ART. 836. As soon as a person accused is included in the provisions of any of the cases of the foregoing article, the judge or court taking cognizance of the cause shall order the issue of requisitions for his call and search.

ART. 837. The requisition shall state all the circumstances mentioned in article 513, excepting the last, when the imprisonment or detention of the accused shall not have been decreed, and also the following:

1. That mentioned in such number of article 835 which is the cause of the issue of the requisition.

2. The period within which the absent accused must appear, under the admonition that otherwise he will be declared in default and that he will suffer the prejudice which may lie according to law.

ART. 838. The requisition shall be transmitted to the judges, published in the newspapers and posted in the public places mentioned in article 512, the original requisition, as well as a copy of each newspaper containing the same being attached to the record.

ART. 839. Upon the expiration of the period of the requisition without the absentee having appeared or been brought before the court, he shall be declared in default.

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ART. 840. If the cause should be at the stage of the *sumario*, it shall be continued until said *sumario* is declared concluded by the proper judge or court, the course of the cause being thereupon suspended, and the proceedings and exhibits which can be kept and which are not the property of a third person not liable shall be filed.

ART. 841. If the oral trial should be pending when the accused is declared in default, said trial shall be suspended and the proceedings filed.

ART. 842. Should there be two or more persons accused and all of them have not been declared in default, the course of the cause shall be suspended with regard to the persons in default until they are found, and shall be continued with regard to the rest.

ART. 843. In any of the cases of the three preceding articles, at the time of the suspension there shall be reserved to the party injured by the crime the right of action he may have for the restitution of the thing, the repair of the damage, and the indemnity for losses, in order that he may exercise the same, independently of the cause, through civil channels against those liable, for which purpose the attachments levied and the bonds furnished shall not be raised or canceled.

ART. 844. When the cause is filed by reason of all the persons accused being in default, an order shall issue for the return to the owners who are not civilly nor criminally liable for the crime, of the effects or instruments of the same, or of the other exhibits which may have been collected during the cause; but before the return is made, the secretary shall make a record containing a minute description of everything returned.

The expert examination which would have to be made if the cause had continued its ordinary course shall also take place.

The provisions of articles 634 and 635 shall be observed, for the return of the effects and exhibits belonging to a person who has not incurred any liability.

ART. 845. If the criminal should have escaped or concealed himself after having received notice of the sentence and while the appeal for annulment of judgment is pending, the latter shall be continued until it is decided, an attorney and solicitor being assigned to the person in default *ex officio*.

The decision rendered shall be final.

The same shall occur if the criminal having absented or concealed himself after having been notified of the sentence, an appeal is interposed by his counsel or by the prosecuting official after his absence or concealment.

ART. 846. When the person declared in default in the cases of articles 840 and 841 should present himself or be found, the cause shall be reopened and continued from the place where it left off.

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Book Fifth.—APPEALS FOR ANNULMENT OF JUDGMENT AND FOR REVIEW.

TITLE FIRST.—APPEALS FOR ANNULMENT OF JUDGMENT.

CHAPTER FIRST.—*Appeals for annulment of judgment for violation of law.*

SECTION FIRST.—*When the appeal lies.*[a]

ART. 847. An appeal for annulment of judgment for violation of law lies from all sentences rendered in first and last instance and at an oral and public trial by audiencias, and from those rendered in second instance upon misdemeanors.

It does not lie from those rendered by the Supreme Court.

ART. 848. The appeal for annulment of judgment referred to in the foregoing article lies when the law shall have been violated in the following decisions of courts:

1. In final sentences.
2. In decisions upon questions of jurisdiction.
3. In decisions upon preliminary exceptions by which the exceptions of *res judicata*, prescription of the crime or of the penalty, or the application of amnesty or general pardon shall have been admitted.

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[a]According to a decision of July 7, 1883, although an appeal for annulment of judgment serves as a remedy for particular prejudices, in addition to fulfilling the principal end of its institution, that is to say, to fix the interpretation of laws and the uniformity of their application, it is not licit for anyone, whatever be his momentary interest, to institute it in a capacity distinct from the one he had in the action, because otherwise this extraordinary measure, by which in every case the sovereignty of the law is maintained in the conditions proper to each proceeding, would be a means of disturbance. (*Decision of July 7, 1883.*)

Although in the cases specified by the laws in force, an appeal for annulment of judgment for breach of form may be allowed from decisions of courts upon questions of procedure, this appeal never lies from its essence and the precise conditions which are to serve as a ground therefor, violation of law. (*Decision of July 10, 1883.*)

The parties, in interposing an appeal for annulment of judgment after having accepted the facts which are stated in the sentence as being proved, must base their right upon the erroneous judicial and legal consideration which the same may have received; and as those which a sentence contains in which the person denounced is condemned as the author of a misdemeanor to the penalties of a fine and indemnity, and another person is declared liable for the latter in a subsidiary manner, they do not affect nor interest, except in so far as said subsidiary liability is concerned, anyone but the person denounced, the one subsidiarily liable, with the hope of success; nor can he or must he allege as a ground for his appeal violations based upon the supposition that said denounced person did not violate the law in committing the offence for which he was sentenced. (*Decision of December 4, 1883.*)

The law prohibits that any more serious classification be made or any heavier penalty be imposed than that which may have been the subject of the appeal, for which reason the Supreme Court, according to the precedents in such cases, does not allow the appeal. (*Decision of December 14, 1883.*)

The law does not authorize the proposition before the Supreme Court of new questions, nor that other violations be alleged than those which may have been committed in deciding the questions arising in the respective actions. (*Decision of March 24, 1884.*)

Civil laws and procedure can not serve as a basis in criminal matters for an appeal for annulment of judgment for violation of law. (*Decision of June 7, 1884.*)

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4. In decisions dismissing proceedings.[a]

5. In those not admitting a complaint.

6. In those disallowing an appeal in complaint interposed against a decision denying the appeal interposed for nonadmission of the complaint.

7. In decisions granting or refusing a declaration of poverty.

8. In any other decisions with regard to which this appeal is expressly granted.

In order that an appeal for annulment of judgment for violation of law may be granted from the decisions mentioned in the foregoing numbers, it shall be necessary that they be final, and, furthermore, that no other ordinary remedy is allowed against the same.[b]

ART. 849.[c] It shall be understood that a law has been violated in a final sentence for the effect of the interposition of an appeal for annulment of judgment:

1. When the acts which are declared proved in the sentence are classified and punished as crimes or misdemeanors, not being such, or

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[a] It is impossible to continue the cause and hold the oral trial without the existence of a specific subject against whom to conduct the proceeding. The appeal does not lie from decisions of absolute dismissal based upon this cause. (*Decision of November 30, 1886.*)

An absolute dismissal can not be impugned for annulment when the proceedings have not been directed against a specific person. (*Decision of January 7, 1887.*)

[b] No. 8 of Art. 848 of the law of criminal procedure in force, in concordance with the second paragraph of Art. 853, relates to those decisions with regard to which the appeal for annulment of judgment is expressly granted; but with regard to a decision relating to proceedings upon a deposit ordered in a *sumario* upon the falsity of a will for the purpose of preserving the property left by the person whose succession is in question, or to assure the civil liability of a third person, in addition to its not having a final character on account of its nature, there exists no provision which authorizes an appeal for annulment of judgment for violation of law from decisions of this character. (*Decision of November 20, 1883.*)

[c] In order that, according to law and the constant and repeated jurisprudence of the Supreme Court, an appeal for annulment of judgment for a violation of law may be admitted it must be founded upon causes which do not impugn or are not in contravention of the facts embodied in the sentence, nor of the declarations which the said sentence may contain by virtue thereof, even though they shall have been made without the specific statement which the law prescribes and not in the place where, according to said law, they should be located, which does not annul their efficiency. (*Decision of November 12, 1883.*)

An appeal for annulment of judgment for violation of law which is founded exclusively upon the supposition that several defects of procedure have been committed during the hearing of the cause does not lie. (*Decision of November 14, 1883.*)

The allegations in an appeal for annulment, if they are to embody all the extrinsic formalities which the law specifically prescribes, must not discuss nor contradict the acts which have been embodied as duly proved in the sentence which is the subject of the discussion nor deduce therefrom consequences not in harmony with reason and common sense. (*Decision of November 16, 1883.*)

An appeal for annulment of judgment which discusses and impugns the declaration which the sentencing chamber has made to the effect that the indications are grave and conclusive, and that their combination convinces of the guilt of the appellant as an accessory to the crime prosecuted without there being any reasonable doubt according to the natural and ordinary order of things, being prohibited by law and by the constant jurisprudence of the Supreme Court, is not admissible. (*Decision of November 27, 1883.*)

The different numbers of Art. 849 of the law of criminal procedure, as well as the jurisprudence of the Supreme Court, require that the parties shall accept

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when they are punished notwithstanding the existence of a circumstance which exempts from criminal liability, or notwithstanding the fact that circumstances subsequent to the commission of the crime prevent their punishment.[a]

2. When the acts which are declared to be proved in the sentence are not classified or are not punished as crimes or misdemeanors, when

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without argument and as an incontrovertible truth the facts which are stated as proved in the sentence appealed from. (*Decision of December 29, 1883.*)

The decisions of the Supreme Court do not establish in criminal matters any doctrine, the violation of which may give rise in itself to an appeal for annulment of judgment for violation of law. (*Decision of December 31, 1883.*)

For the decision of an appeal for annulment of judgment for a violation of law, it is requisite to set out necessarily and legally from the acts which the court *a quo* may have admitted as proved in the *resultandos* of its sentence, it being possible only to avail oneself of the explanations given thereon in the *considerandos* when any deficiency or contradiction is noted in the statement of the facts. (*Decision of January 4, 1884.*)

It is a necessary condition in order that an appeal for annulment of judgment for a violation of law may be heard and discussed, that the party interposing the same shall not allege facts which the sentencing chamber shall not have considered proved, nor derive consequences which do not originate logically and rationally from said proven facts. (*Decision of January 15, 1884.*)

An injury consisting in that the accused has been condemned to an indemnity higher than the sum at which the damages caused by the crime are appraised, has no basis nor does it come under the provisions of any of the cases mentioned in Art. 349 of the Law of Criminal Procedure. (*Decision of September 19, 1884.*)

Violations which refer to provisions relating to procedure can not be judged as sufficient to serve as grounds for an appeal for annulment of judgment for violation of law, as is inferred from Art. 849 of the Law of Criminal Procedure and the doctrine which the Supreme Court has established in many of its decisions. (*Decision of October 23, 1884.*)

As the Supreme Court has repeatedly declared, an appeal for annulment of judgment lies only when a violation of the articles of the Code or of other provisions of a penal character are involved. (*Decision of November 19, 1884.*)

The alleged violation of Art. 19 of the Penal Code does not come within the provisions of any of the cases by reason of which an appeal for annulment of judgment for violation of law can be interposed according to Art. 849 of the Law of Criminal Procedure. (*Decision of June 3, 1885.*)

It is not proper to discuss grounds which relate to the amount of the indemnity of damages, because this matter is not included in any of the cases which authorize an appeal for annulment of judgment. (*Decision of June 5, 1885.*)

An appeal interposed against a final sentence is not admissible if Art. 849 is not cited, as well as the specific case of said article, or, what is the same, the cause for annulment. (*Decision of October 10, 1885.*)

According to the constant jurisprudence of the Supreme Court, when the grounds alleged as a basis for the appeal have no foundation upon the facts embodied and declared as proved in the sentence appealed from, it is not admissible. (*Decision of October 8, 1885.*)

This article does not authorize an appeal for annulment of judgment which is based upon the amount of the civil liability derived from the crime, nor less on the nonreservation to the person liable in a subsidiary manner of his right of action against the principal. (*Decision of October 21, 1886.*)

[a] The specific precept of Art. 874 of the Law of Criminal Procedure, to the effect that in an appeal for annulment of judgment the article of the law authorizing it must be cited, is not complied with when, with manifest incongruence, the allegations of the appellant tending to show that the sentence contains an error with regard to the classification of the crime, No. 1 of Art. 849 is invoked. (*Decision of October 15, 1884.*)

Neither No. 1 nor No. 6, nor any other number of Art. 849 of the Law of Criminal Procedure, authorize an appeal which refers to the imposition of costs

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they are such, and without subsequent circumstances preventing their punishment.[a]

3. When the acts which are declared proved in the sentence constitute a crime or misdemeanor and an error of law has been committed in their classification.[b]

4. When an error of law has been committed in determining the participation of each of the accused in the acts which are declared to be proved in the sentence.[c]

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and in which article 28 of the Penal Code is cited as having been violated. (*Decision of November 11, 1884.*)

In interposing an appeal for annulment of judgment upon the merits there must be cited the article and number of the Law of Criminal Procedure which authorize it, in order to map out the argument and determine the judicial character, the legal grounds, and the effect upon the procedure of the violation or violations alleged. The appeal being interposed in accordance with No. 1 of Art. 349, the decision must be circumscribed to an examination as to whether the facts ascertained and proved constitute a crime or not, and whether circumstances which exempt from liability or from a penalty were present, without it being permissible to discuss their classification on account of the petition of the appellant not being based upon No. 3 of the said Art. 849. (*Decision of March 24, 1886.*)

An appeal for annulment of judgment can not be entertained when it is based upon this case and the act is punishable. (*Decision of October 7, 1886.*)

The fact that the acts which have been the subject of the proceedings are not declared to be proved in the sentence is not a ground for annulment if an affirmation of the guilt of the persons accused, inferred from indications of influence, is included. (*Decision of December 21, 1886.*)

An appeal based upon No. 1 of Art. 849, under the supposition that the act prosecuted does not constitute a crime, can not be entertained when the error of the sentencing chamber consists in a wrong classification having been made. (*Decision of February 23, 1887.*)

[a]An appeal from a ruling rejecting a complaint based upon No. 2 of Art. 849 of the Law of Criminal Procedure, relating to final sentences, is not in compliance with the provisions of Art. 874, and said appeal is not admissible for the reason that the article applicable which really authorizes it is not cited. (*Decision of November 30, 1883.*)

When the appeal is based exclusively upon an error of law committed in the classification of the proved acts, under the supposition that they constitute a crime and not a misdemeanor as the sentencing chamber had considered, a citation of No. 2 of Art. 849 of the Law of Criminal Procedure renders its admission impossible, because the real congruent case is the third one. (*Decision of November 12, 1884.*)

Judicial decisions relating to dismissal of proceedings are susceptible of annulment only in the cases specified in Art. 852 of the Law of Criminal Procedure; and a decree of dismissal having issued properly or improperly, it is the obligation of the appellant to conform for the annulment which he desires, to the form and character of said decision, a citation of Nos. 2, 4, and 5 of Art. 849 of said Law of Criminal Procedure, which relate to final decisions being insufficient therefor. (*Decision of November 13, 1884.*)

[b]An appeal interposed in the name of the accused and based upon No. 3 of Art. 849 of the law of criminal procedure can not be entertained when the classification arising from the crime would call for a penalty equal or higher than that determined, for which the counsel of the appellant had no right. (*Decision of December 3, 1884.*)

[c]An appeal which is directed to a denial of the participation in the crime charged to the appellant is not admissible if No. 4 of Art. 849 of the law of criminal procedure has not been cited, which is the only congruent case herein. (*Decision of October 13, 1884.*)

A failure to declare the acts to be proved in the *resultandos* is not a cause for annulment, when such affirmation is sustained in the *considerandos*. (*Decision of November 17, 1886.*)

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5. When an error of law has been committed in the classification of the acts which are declared to be proved in the sentence as aggravating, or extenuating circumstances or such as exempt from criminal liability.

6. When the degree of the penalty imposed does not correspond according to law to the accepted classification with regard to the triable act, the participation therein of the accused or the circumstances which extenuate or aggravate criminal liability.[a]

7. When, in view of the acts which are declared to be proved, an error of law has been committed in sustaining or overruling the second, third, fourth, and fifth exceptions of Art. 666 interposed in the action.

ART. 850. The law shall be understood to have been violated in the case of No. 2 of Art. 848 for the same purpose when, in view of the classification of the acts which appears in the sentence, the court shall have incurred a legal error in deciding upon its jurisdiction.[b]

ART. 851. For the above-mentioned purposes it shall be understood that the law has been violated in the decisions mentioned in No. 3 of

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[a]According to the provisions of the law of criminal procedure and the jurisprudence laid down by repeated decisions of the Supreme Court, in order that an appeal for annulment of judgment for a violation of law may be deemed admissible, it is necessary that the error of law to which the violations supposed to have been committeed be specifically stated, and that the legal provisions in which the sufficiency of such error is established be cited, and furthermore it is a necessary condition that the violations alleged be derived from the acts which are accepted as proved in the sentence appealed from. (*Decision of November 17, 1883.*)

An appeal which does not specify any point of law in its allegations is not admissible. (*Decision of November 27, 1883.*)

A sentencing chamber having punished jointly three distinct crimes considering the attendance of an aggravating circumstance of breach of trust, without expressly specifying to which of the said crimes said circumstance refers, an appeal does not lie which is limited exclusively to considering the breach of trust as inherent to one of them; because although in this connection the reasons of the appellant might be acceptable, it is not proper to enter upon an examination of the existence of the same reason with regard to the two other crimes to which the appeal does not extend, and by virtue thereof it can not be declared that in the sentence appealed from an error of law and a consequent violation of law has been committed. (*Decision of March 26, 1884.*)

If the appeal is based upon the fact that the sentencing chamber, without bearing upon the acts which it declares proved, considers an aggravating circumstance to be present, and applies the penalty affixed to the crime in its maximum degree, as this error, if incurred, would be included under the provisions of No. 5 of Art. 849 of the law of criminal procedure, the citation of No. 6 of the said article is not congruent, and renders the course of said appeal impossible. (*Decision of October 23, 1884.*)

The error of law provided for in No. 6 of Art. 849 of the law of criminal procedure does not authorize the discussion of the existence of circumstances which may modify the liability and which have not been declared in the sentence, but only the propriety of the penalty imposed according to said curcumstances. (*Decision of December 4, 1884.*)

[b]According to Art. 850 of the law of criminal procedure, in order that an appeal may be interposed from a decision upon questions of jurisdiction it is necessary that it be based upon the acts as they are embodied in the decision rendered. (*Decision of October 18, 1883.*)

An appeal for annulment of judgment for a violation of law is not admissible when that deduced is interposed against a decree in which the acts have not been classified and should not have been classified, and the purpose of which is not to determine who shall take cognizance of the crime which the former has denounced, deciding only whose duty it is to conduct the *sumario*, which is not the same thing. (*Decision of January 25, 1884.*)

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Art 848 when, in view of the acts which are declared to be proved, an error of law has been incurred in declaring them included in a prior final sentence or in considering the penal action arising from the crime or misdemeanor to have prescribed, or in including the acts in an amnesty or a pardon.

ART. 852. For the purposes mentioned in the foregoing articles it shall be understood that the law has been violated in any of the decisions included in Nos. 4, 5, and 6 of Art. 848 when they are founded upon the failure to consider as a crime or misdemeanor the acts mentioned by the judge or court in the respective decisions, when they are such or present characteristics thereof, and subsequent circumstances do not prevent their punishment, or when the accused are declared exempt from criminal liability when they should not be, in accordance with the express provisions of the law.[a]

ART. 853. The law shall be understood to have been violated for the same purpose in the decision mentioned in No. 7 of Art. 848 when, in view of the acts which are declared to be proved, the provisions of Art. 123 have been violated without being founded therefor upon the exception mentioned in Art. 125.

The law shall likewise be considered to have been violated in the decisions referred to in No. 8 of Art. 848, when they are in contravention of an express legal precept.

ART. 854. An appeal for annulment of judgment may be interposed by: The public prosecutor; those who may have been parties to the criminal actions; those who, without having been such, appear condemned by the sentence, and the heirs of either.

The civil plaintiff can not interpose the appeal except in so far as restitutions, repairs, and indemnities claimed by him may be affected.

SECTION SECOND.—*Preparation of the appeal.*

ART. 855. He who intends to interpose an appeal for annulment of judgment for violation of law, shall request of the judge or court who rendered the final judicial decision a transcript of the same, and also of the judge of first instance, if the decision shall have been rendered upon an action upon a misdemeanor, and the *resultandos* and *considerandos* of that of the municipal judge have been accepted and not textually reproduced.

ART. 856. The petition mentioned in the foregoing article shall be presented within five days following the last notification of the sentence or decision against which it is intended to interpose the appeal.

In actions involving misdemeanors the period shall be the first day following that on which the last notification was made.

ART. 857. A solemn promise to make the deposit established in Art. 875 of this law shall be embodied in the petition requesting the transcript of the sentence for the preparation of the appeal.

If the party preparing the appeal should have been declared insolvent, either in toto or in part, or poor by a final decision, he shall ask the court that this circumstance be expressly stated in the certificate

[a] Art. 852 of the law of criminal procedure supposes a cause with a person undergoing trial or in which at least there shall have been a party supposed to sustain the judicial action, requesting for this purpose the prosecution of a specific person. (*Decision of June 30, 1884.*)

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of the sentence to be issued, and he shall bind himself furthermore to answer, if his circumstances improve, for the amount of the deposit, which should be made according to the case.

ART. 858. The courts shall grant the transcript within three days unless it be requested outside of the period fixed in Art. 856, and shall have it issued within a similar period. When it is denied, they shall state in the decision denying it the date of the sentence or decision, that of its last notification to the parties, and that of the presentation of the petition for the transcript.

A certified copy of the decree of denial shall be given to the person requesting the transcript at the time of the notification.

The sentencing courts shall, under their strictest liability, state in said certificate, in accordance with what may appear from the causes, whether the appellant has been declared insolvent by reason of not possessing any property whatever, or in a proper case whether he has obtained a declaration of poverty in a legal sense; or if, on the contrary, in view of his circumstances, the external indications of his social condition and the manner of his defence or actions during the trial, he is included in the wealthy class.

ART. 859. After the certificate referred to in the foregoing article has been issued, all the parties shall be summoned to appear before the second chamber of the Supreme Court within the period of sixty days, not subject to extension.

ART. 860. Upon the petition of an appellant defended as a poor person or declared insolvent, the sentencing court shall transmit directly to the second chamber of the Supreme Court the transcript necessary for the interposition of the appeal, or in a proper case a certified copy of the decree denying the same.

The chamber shall order the appointment of an attorney and solicitor to interpose the appeal which may be proper, should the appellant not have appointed them. In either case the chamber shall fix the period within which it must be interposed.

ART. 861. The sentencing court shall, by the first direct mail after the day upon which the transcript of the sentence is delivered to the party intending to interpose the appeal for annulment, transmit to the second chamber of the Supreme Court a certificate of the reserved votes, if there be any, or a negative certificate in a proper case, and shall order that those who may have been parties to the cause, as well as the appellant, be notified of the delivery or transmission of the transcript summoning them, in order that they may appear in the said chamber to defend their rights within the period fixed in Art. 859.

Together with the certificate mentioned, the sentencing judge or court shall transmit another issued by his secretary, in which shall be stated succinctly the cause or action, the names of the parties, the crime or misdemeanor, and the day of the delivery of the transcript to the appellant as well as that of the summons of the parties. A party who shall not have prepared the appeal may concur therein within the period of the summons and upon being informed of that formulated by the other party, alleging the grounds which he may deem proper.

The date of the sailing of the mail vessel carrying the correspondence to the Peninsula containing the package of the aforementioned

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documents shall be recorded in the said cause and notified to the parties, the name of the vessel and the company or individuals to which it may belong being also stated.

Should the loss of the said mail vessel be established in proper form by the declaration of the proper authorities, the periods referred to in articles 859, 861, 863, 865, and 873 of this law shall be considered as extended, which periods, in case of the loss or detention of the vessel on the voyage, by reason of *force majeure*, shall begin to run again from the date upon which the loss or wreck of the mail vessel shall have become known in the territory of the respective audiencia, or from the time it was established that she continued her voyage on account of the cessation of the causes which interrupted it.

In case of the loss or wreck of the respective mail vessel, the audiencias where the causes were decided, within the new periods computed in the manner established in this article, shall proceed to the delivery of the certificates, transcripts from the record, and of other documents which may be proper, conforming to the provisions for the issue and transmission of those which may have been rendered useless or lost.

The Supreme Court shall always reproduce, on its own motion and in proper form, the orders, decrees, or decisions rendered by it in appeals for annulment of judgment when they shall have been lost on account of the loss or wreck of the mail vessels of the Antilles, and when the parties request of the same court that the absence of the decisions originally communicated be made good.

SECTION THIRD.—*Remedy of complaint on account of a refusal of a transcript requested for the interposition of an appeal for annulment of judgment.*

ART. 862. The sentencing court to which the petition relating to the preparation of an appeal for annulment of judgment is submitted may deny, in a decision setting forth its reasons, the issue of the certificate of the sentence against which it is desired to appeal, in the following cases:

1. When said petition is presented after the period granted by art. 856.

2. When presented by a person not included in any of the cases mentioned in art. 854.

And 3. When the judicial decision against which the appeal is prepared is not included in any of the classes mentioned in art. 848.

ART. 863. If the party who prepared the appeal should request, within two days following the notice of the decree of denial, that a certified copy of the same be transmitted to the second chamber of the Supreme Court, stating his intention to complain to the same, the sentencing chamber shall grant his request and shall order that the parties be summoned to appear before said court within the period prescribed by art. 859.

ART. 864. The financial circumstances of the persons presenting the complaint shall also be stated in the certified copies of the decrees of denial referred to in the foregoing articles, in the terms prescribed by art. 858.

ART. 865. After the certified copy of the decree of denial has been received in the second chamber of the Supreme Court, the appearance

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of the complainant, who must conform in all matters to the provisions of art. 859, shall be awaited.

ART. 866. Upon the expiration of the period of the summons, without the appearance of the complainant, the chamber shall issue a decree declaring the complaint to be abandoned, and therefore the order of denial final and accepted with the costs, and shall communicate it to the sentencing court for the proper purposes.

ART. 867. If the complainant should appear in due time, he shall state at the time of his appearance, with the greatest conciseness and clearness, in a petition signed by an attorney and solicitor, the reasons for his complaint.

He shall transmit a certified copy of this petition with the same, which shall be delivered to the public prosecutor, and upon the expiration of three days, during which the latter must state to the chamber what he may deem advisable as to the propriety or impropriety of the complaint, the proceedings shall be referred to the justice *ponente*.

ART. 868. If the complainant be insolvent or be authorized to litigate as a poor person and during the period of the summons lie should appear before the second chamber of the Supreme Court in the manner prescribed by art. 874, the chamber shall order that he be assigned an attorney and solicitor *ex officio* for his defence, and that they be given a certified copy of the decree of denial in order that within a period of three days they may formally prepare the complaint, if they consider it proper, or that the attorney excuse himself should he not find grounds therefor.

In formally preparing the complaint the counsel shall accompany a copy of the same, which shall be delivered to the public prosecutor, proceeding in accordance with the terms established in the second paragraph of the foregoing article.

ART. 869. The second chamber of the Supreme Court shall, after receiving the report of the justice *ponente*, without further proceedings, render the proper decision in view of the petitions presented, five justices being sufficient for the decision of this remedy.

ART. 870. When the chamber shall consider the complaint well founded, it shall reverse the decree of denial and shall order the sentencing court to issue the certificate of the sentence demanded and take the other steps prescribed in articles 858 and 861.

When the complaint is improper in the opinion of the chamber, it shall reject it with costs, and shall communicate its action to the sentencing court for the proper purposes. The provisions of the last two paragraphs of art. 923 are applicable to this remedy.

ART. 871. There shall be no remedy whatsoever against the decision of the second chamber of the Supreme Court upon the remedy of complaint.

ART. 872. If the complainant be the public prosecutor, the complaint shall be heard and determined with him in attendance only. If the complainant be a private or particular accuser, it shall be heard and determined according to the terms established in the preceding articles. A copy of the complaint shall be delivered to the accused only when he enters an appearance in legal form within the period of the summons, in order that, if he deems it proper, he may object thereto within the period of three days which art. 868 prescribes.

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SECTION FOURTH.—*Interposition of the appeal.*

ART. 873. An appeal for annulment of judgment for violation of law shall be interposed before the second chamber of the Supreme Court within the sixty days next after the delivery or transmission of the decision. Upon the expiration of this period without its interposition, or in a proper case of the period which the Supreme Court may have granted in accordance with the provisions of article 860, said decision shall be considered final and accepted, and the court shall order that the execution of the sentence be proceeded with.

Parties who can do so must concur in the appeal within the same period.

ART. 874. This appeal shall be interposed in writing, signed by an attorney and solicitor having authority by virtue of a sufficient power, a promise to present it not being admitted in any case, and there shall be stated in said instrument, in numbered paragraphs, with the greatest clearness and conciseness, the grounds therefor; the article of the law authorizing it and the laws which are supposed to have been violated shall be cited.

The aforesaid certified copy shall be presented with this instrument if it shall have been delivered to the appellant, as well as a literal copy of the appeal authorized by the counsel of the same.

The concurrence in the appeal shall be interposed in the manner mentioned in the first paragraph of this article.

When a poor appellant has the certificate in his possession, he may present it with a petition signed by his solicitor, and in the absence of the latter, by him in person or by another person at his request, in which he shall state his desire to interpose the appeal and request the appointment of an attorney to take charge of his defense and of a solicitor to represent him, should he not have any. This provision shall be applicable when the appellant is poor or has been declared insolvent, even though he shall have appointed an attorney and solicitor. The appeal shall be considered to have been interposed by the presentation of said petition and certificate.[a]

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[a] Article 874 of the law of criminal procedure requiring, as it does, that in the petition interposing the appeal the article of the law authorizing it be cited, it is evident that if a case be cited which is no congruent it is equal to not citing any case, constituting an essential defect of form which is an obstacle to its admission. (*Decision of December 10, 1883.*)

When the power attached to the instrument interposing the appeal relates only and exclusively to ordinary and extraordinary acts, actions, and appeals relating to the law of civil procedure, neither the circumstance of the former having been admitted for the interposition, hearing, and determination of the complaint, which first petition was ratified by the complainant, nor the fact of a new power of attorney having been presented after the appellee shall have formulated his objection, can cure the absence of an indispensable requisite, nor consequently fulfill the specific precept of article 874 of the law of criminal procedure. (*Decision of November 27, 1884.*)

An appeal is not admissible when the solicitor interposing it does not establish that he is authorized therefor, it not being sufficient that he defended the accused at the trial. (*Decision of January 14, 1885.*)

In order that the article of the law authorizing an appeal may be considered to have been cited, it is indispensable that the number or case in which the error of law believed to have been committed in the final sentence be designated and specified. (*Decision of May 12, 1885.*)

Appeals for annulment of judgment for violation of law must set forth the grounds therefor, as required by article 874 of the law of criminal procedure

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ART. 875. If the appellant be the private accuser and the crime or misdemeanor be of those which can be prosecuted at the instance of the Government, his solicitor shall present, with the petition of the interposition, a document showing that a deposit of 1,000 pesetas has been made in the public institution provided therefor if the public prosecutor should not have prepared or deduced the said appeal from the sentence, it being necessary to make as many deposits as there may be accusers appealing, unless all of them shall have constituted one juridical personality.

The deposit shall be 500 pesetas, if the crime be of those which can be prosecuted at the instance of a party only.

If the appellant be the civil plaintiff, the deposit shall be 200 pesetas, and if he be a person civilly liable, 100 pesetas.

If the accused be the appellant, he shall present to the chamber, with the petition of interposition, the document proving that he has deposited 125 pesetas in the public establishment set aside for the purpose. If the public prosecutor shall have prepared the appeal, no deposit shall be required of the persons accused who may have prepared it also.

If the appellant should be authorized to litigate as a poor person or should have been declared insolvent, he shall be bound to answer for the amount referred to should his circumstances improve.

ART. 876. In the case provided for in the last paragraph of article 874, or when the sentencing court shall have transmitted the transcript of the sentence appealed from on its own motion, the chamber shall order the appointment within three days of a solicitor and attorney in order that the latter may prepare the appeal.

After counsel for the appellant have been appointed on motion of the court, the transcript of the sentence shall be delivered to the solicitor in order that the attorney may interpose the appeal within five days precisely, or state within a similar period that he does not find any grounds for annulment to plead against the sentence in question. A literal copy of either statement, authenticated by the solicitor, shall be attached.

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in force, and this condition is not fulfilled when the appellant confines himself to an indication of the violations without setting forth his grounds or reasons. (*Decision of May 13, 1885.*)

A violation of the jurisprudence of the Supreme Court, whether correct or not, can not be invoked as a sufficient ground or reason for an annulment, because the latter can only take place for a violation of law. (*Decision of June 3, 1885.*)

The fact that a court has not made use of the powers granted it by article 733 of the law of criminal procedure, can never be alleged in support of an appeal and much less in support of an appeal for a violation of law. (*Decision of October 9, 1885.*)

The provisions of article 874 of the law of criminal procedure are not complied with when the petition in which an appeal for annulment of judgment is interposed, the legal provisions which authorize the appeal and those which are supposed to be violated are cited in a confused manner. (*Decision of November 19, 1885.*)

Appeals for annulment of judgment for a violation of law must set forth the grounds therefor, as required by this article, a condition which the appellant does not comply with when he confines himself to an indication of the violation without setting forth the grounds or reasons. (*Decision of February 21, 1886.*)

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If the attorney appointed should not consider the appeal to be well taken, he shall so state, setting forth the ground upon which he bases his opinion.

The chamber shall order in such case that another attorney be appointed within the period above mentioned, and if he should be of the same opinion, he shall also so state, with the grounds for his opinion, within a like period of five days, and a third one shall be appointed within the period established for the appointment of the others.

If the third attorney should be of the same opinion, he shall make his statement in the period and manner prescribed in the foregoing paragraph.

In such case the papers shall be referred to the public prosecutor in order that he may set out the grounds for the appeal for the benefit of the person who shall have interposed it, if he considers it well taken, or otherwise return the same endorsed "examined." If the public prosecutor should do the former, the appeal shall be heard and determined in the ordinary manner; if the latter, it shall be considered denied.

An attorney who shall permit the period mentioned in the foregoing paragraphs to expire without giving his opinion against the appeal, shall be considered as having accepted the defense, and he shall be obliged to state the grounds within the period fixed.

When within the period of the summons or upon the day following the appointment, the solicitor of the appellant should state his intention of interposing the appeal, or, if the public prosecutor should request it, the chamber shall order that the package containing the certificate of the reserved votes be opened and be communicated with the record of the proceedings to the parties. Otherwise it shall not be opened until the appeal is interposed, and the parties may examine the same in the office of the secretary from the day it is set for hearing until it is held.[a]

ART. 877. The appeals shall be numbered correlatively in the order of their presentation, and a certificate of the number pertaining to each shall be given to the persons interposing the same upon their request.

Appeals from sentences imposing the penalty of death, from decisions upon questions of jurisdiction and from those in flagrant cases shall be numbered separately.

ART. 878. Upon the expiration of the period of the summons without the appearance of the appellant in the manner which this law prescribes according to the cases, the second chamber of the Supreme Court shall, without further proceedings, make an order declaring the appeal to be abandoned, with the taxation of the costs against the private appellant, communicating this to the sentencing court for the proper purposes.

ART. 879. The public prosecutor shall conform in the preparation and interposition of the appeal to the terms and forms prescribed in articles 855, 873, and 874, in so far as they may be applicable thereto.

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[a] See Official Gazette P. R., No. 37, February 12, 1899.

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SECTION FIFTH.—*Hearing of the appeal.*

ART. 880. After the appeal has been interposed and upon the expiration of the period of the summons, the chamber shall designate the justice *ponente* whose turn it may be, and shall order that the record of proceedings be referred for five days and, in a proper case, a certificate of the reserved votes, to each of the parties who shall have entered an appearance, and to the *fiscal* if the latter be not the appellant.

Copies of the appeal shall also be delivered to the respective parties.

ART. 881. In issuing the order referred to in the aforegoing article, the chamber shall decree the appointment of an attorney and solicitor for the defense of the person accused, condemned, or acquitted by the sentence, if he be not the appellant nor have appeared.

The attorney thus appointed can not excuse himself from accepting the defense of the accused, unless it be by reason of some incompatibility, in which case another attorney shall be appointed.

ART. 882. Within the period of reference, the public prosecutor and the parties shall prepare themselves and may object to the admission of the appeal or to the concurrence therein.

Should they object to the same, they shall attach to their written objection as many copies thereof as there may be opposite parties, to whom the secretary shall deliver them at once.

ART. 883. After the record shall have been returned by the person who last received it, if the admission or concurrence be objected to, or the chamber should consider this preliminary question to be doubtful, the presiding judge shall set a day for its decision.

ART. 884. The hearing upon this preliminary question shall be held at a public sitting in the numerical order of the appeals, if at the time the turn of each arrives it is ready to be heard.

Appeals interposed against sentences by which the penalty of death shall have been imposed, or from decisions upon questions of jurisdiction as well as those which involve crimes *infraganti*, shall be disposed of before the others.

ART. 885. The hearing shall be held by the secretary reading the sentence and the reserved votes, if there be any; the instrument interposing the appeal, that of the concurrence, if there be any, and the objections in a proper case.

The attendance of the attorneys for counsel appointed *ex officio* shall be obligatory, and that of the public prosecutor shall be optional.

The attorney for the appellant shall speak first, then the one for the opposite party, and finally the public prosecutor, if present. If the latter be the appellant he shall speak first.

The arguments shall be confined to the preliminary question discussed.

ART. 886. Upon the termination of the day's hearing the chamber shall deliberate upon the admission of the appeals which may have been considered, with a hearing of the *ponente*, who must for this purpose have the draft of a decision in readiness.

If the chamber should consider it necessary to postpone said decision, it may do so; but in no case shall more than three days elapse without a decision upon the admission.

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ART. 887. The decision shall be formulated in one of the two following manners:

1. "Admitted and concluded for hearing."

2. "The admission does not lie, and let it be communicated to the sentencing court for the proper purposes."

ART. 888. The decision denying the admission of the appeal shall set forth the reasons therefor and shall be published in the *Gaceta* of Madrid, and in the *Colección Legislativa*, stating the name of the *ponente*. The decision admitting the appeal shall not set forth the reasons nor shall it be published.

The *resultandos* and *considerandos* of the decisions shall be confined to the points pertinent to the question decided.

When the same decision shall deny the admission of the appeal upon some of its grounds and admit it with regard to others, or when the appeal interposed by one interested person is admitted and denied with regard to others, the former must set forth the grounds therefor with regard to the denying part and must be published in the *Gaceta* of Madrid.

The decision denying the admission shall be drafted in the form of a sentence.

ART. 889. In order to refuse the admission of the appeal five concurring votes shall be necessary. Should this number of votes not be cast, it shall be considered as admitted.

ART. 890. When the chamber denies the admission of the appeal and the appellant shall have made a deposit, he shall be condemned to its forfeiture and one half thereof shall be applied to the appellee by way of indemnity, and the other half shall be retained by the chamber of administration for application exclusively to the unforeseen requirements of the administration of justice, the personnel, and supplies.

If the appellant should not have made a deposit on account of his poverty, a similar decision shall be rendered when his circumstances improve.

ART. 891. In case that the counsel of the appellant should, in accordance with article 876, state that they do not find grounds for annulment of the sentence involved, and neither the public prosecutor should state them within the period granted by the said article, the chamber, after a report of the justice *ponente*, shall render a decision disallowing the appeal prepared and shall order it communicated to the sentencing chamber.

ART. 892. There shall be no remedy against the decision of the chamber admitting or denying the appeal and the concurrence.

ART. 893. When the concurrence in the appeal and the concurrence desired by any party be not objected to, and the court should not be in doubt as to the propriety of one or the other, it shall order *eo instanti*, without a public hearing nor a citation of the parties, the admission of the appeal and of the concurrence in a proper case.

SECTION SIXTH.—*Decision of the appeal.*

ART. 894. After an appeal for annulment of judgment has been allowed and a day set for the hearing, the latter shall be had at a public sitting, with the attendance of the counsel of the parties appointed *ex officio* and the public prosecutor. The chamber shall im-

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pose upon attorneys appointed *ex officio* who shall not attend, the disciplinary corrections which it deems they deserve in view of the gravity or importance of the matter.

ART. 895. The chamber shall order the appeals for hearing in the order of their admission, observing the special preference with regard to those mentioned in the second paragraph of article 884.

If for any cause the hearing cannot be had on the day set, the first day possible shall be set, seeking not to change the established order more than necessary.

ART. 896. The hearing of the appeal shall be had in the manner determined in the first paragraph of article 885, with the attendance and oral arguments of the attorneys for the parties, if the latter should deem it advisable, and that of the public prosecutor in any case, the appellant first speaking, then those who may have concurred in the appeal, and finally those opposing it. Whenever the public prosecutor opposes the appeal he shall speak last.

ART. 897. The public prosecutor and the attorneys may, in the same order in which they may have spoken, correct any error of fact, referring to those admitted in the decision appealed from.

The presiding judge shall not permit any discussion upon the existence of the acts embodied in said decision, and shall call to order any person attempting to do so.

ART. 898. Seven justices shall attend for the hearing of appeals for annulment of judgment.

ART. 899. Upon the conclusion of the public hearing the chamber shall decide the appeal within five days; but when it is absolutely necessary it may extend to ten days the period for the preparation and publication of the sentence.

ART. 900. The decision shall be drafted in the following manner:

1. The date shall be stated, the crime involved in the cause, the names of the accused and private accusers who may have taken part therein, the court from which it originates, and the other general circumstances which serve for a determination of the subject-matter of the appeal.
2. Under the word *resultando* shall be transcribed literally those of the sentence or decision appealed from, excepting such as are manifestly impertinent.
3. The contents of the adjudging portion of the same decision shall be stated.
4. The grounds for annulment alleged by the respective parties.
5. The name of the justice *ponente*.
6. In *considerandos* the conclusions of law of the decision.
7. The decision.

ART. 901. When the chamber considers the law violated upon any of the grounds alleged, it shall declare that *the appeal is well taken*, and shall annul and reverse the decision involved, ordering the return of the deposit to the person who made it.

Should the chamber hold that there has been no violation, it shall declare that *the appeal is not well taken*, and shall adjudge the payment of costs against the appellant as well as the forfeiture of the deposit for the purposes specified in article 890, or to a payment of an equivalent sum, should he have been defended as a poor person, when his circumstances improve.

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The public prosecutor is excepted from the adjudgment upon costs.

ART. 902. If the chamber reverses and annuls the decision which is the subject of the appeal, it shall render immediately thereafter, but separately, the proper decision, accepting the findings of fact and conclusions of law of the decision reversed which do not relate to the points which may have been the subject of the appeal, and the part of the decision compatible with the latter, replacing the part reversed by that which may be proper, according to the real provisions upon which the annulment may have been based.

ART. 903. If one of the accused be the appellant, the new sentence shall redound to the benefit of the rest, in so far as favorable to them, provided that they are included in the same condition as the appellant and that the grounds alleged by reason of which the annulment of the sentence is declared are applicable to them. It shall never prejudice them in so far as it may be adverse.

ART. 904. There shall be no remedy whatsoever against the decision of annulment and that rendered by virtue thereof.

ART. 905. Decisions declaring an appeal for annulment of judgment, well taken or not, shall be published in the *Gaceta* of Madrid and in the *Colección Legislativa*.

ART. 906. If the decisions referred to in the foregoing article should be rendered in causes upon any of the crimes against chastity or honor, they shall be published, with a suppression of the proper names of the persons, of the places, and of the circumstances which may tend to make known the accusers, the accused, and the courts which decided the cause.

If, on account of special circumstances, the chamber should consider that the publication of the decision referred to in the foregoing article might offend public decency, it may order in the decision itself that it be not published.

ART. 907. A withdrawal of the appeal may take place at any stage of the proceedings after a ratification by the person interested, or upon the presentation by his solicitor of a special power therefor. If the parties should have been cited for the decision of the appeal, the individual withdrawing therefrom shall forfeit one-half of the deposit, should he have made it, and shall pay the cost of the proceedings for which he may be responsible.

ART. 908. Sentences against which an appeal for annulment of judgment may be interposed shall not be executed until the expiration of the period fixed for its preparation for a violation of law or for its interposition for a breach of form.

If the appeal should be prepared or interposed within said period, the execution of the sentence shall be stayed until its termination, unless there should have been an acquittal, in which case if the criminal is imprisoned he shall be set at liberty.

ART. 909. If the appeal should have been prepared and interposed by one of the persons accused, the sentence may be carried out at once with regard to the others without prejudice to the provisions of article 903.

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CHAPTER II.—*Appeals for annulment of judgment for breach of form.*

SECTION FIRST.—*When the appeal lies.*

ART. 910. An appeal for annument of judgment for breach of form lies from the decisions mentioned in article 848.[a]

ART. 911. An appeal for annulment of judgment for a breach of form may be interposed:

1. When the taking of some evidence considered pertinent proposed in due time and form by the parties shall have been denied.[b]

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[a] The admission of an appeal for annulment of judgment for a breach of form must not be granted when the article which may authorize it expressly and specifically is not cited, but article 910 of the law of criminal procedure is so cited, which is not enough, or even though upon interposing it the error supposed to have been committed is stated. (*Decision of March 29, 1884.*)

[b] When the public prosecutor has proposed in time the means of proof which he considers proper, and among them the confession of the accused, which evidence was admitted, if, notwithstanding this, he be refused at the time of the oral trial the right to introduce the evidence of confession which he had first proposed and which had been admitted, the provisions of the fourth paragraph of article 761 of the law of criminal procedure are not fulfilled, and therefore a breach of the form of procedure referred to in No. 1 of article 911 is committed. (*Decision of May 19, 1883.*)

The confession of the accused forms a part of the means of the *sumario* established by the law of criminal procedure for the verification of the crimes and of the delinquents, and as the *sumario* is nothing but a preparation for the oral trial, where all the facts are to be elucidated, and all questions arising in the cause to be discussed, the said confession of the accused can not but figure in the action as an element of proof. This characteristic principle of the said law is developed in articles 656, 688, 729, 730 et seq. (*Decision of June 28, 1883.*)

With regard to the crimes of misappropriation of funds and theft, on account of the accused having sold several head of cattle which had been levied upon, No. 1 of article 911 of the law of criminal procedure is violated in not permitting the introduction of evidence requested by said accused persons in a supplementary pleading to his written classification, consisting of the reading at the oral trial of the proceedings relating to the attachment and deposit of the cattle attached; because, as the existence of the triable act appears in said proceedings, they have great juridicial importance, and in such case the principle contained in article 730 of the law of criminal procedure applies. (*Decision of March 22, 1884.*)

When both the complaint involved in the cause, as well as the conclusions of the written accusation, have involved the crimes of calumny and of grave acts of contumely against persons who, as members of a revolutionary board, exercised public functions, and on the occasion of such functions, the person accused of these crimes has the right to submit the evidence of the acts charged against him in so far as it may be pertinent, and a chamber, in refusing to admit such evidence, incurs the breach of form which is a ground for the appeal. (*Decision of April 19, 1884.*)

The contradiction referred to in the second part of No. 1 of article 911 is not that which may appear between the decree or sentence and the result appearing from the *sumario*, but that which manifestly appears between the acts declared as proven in the sentence with regard to the evidence taken at the oral trial. (*Decision of July 12, 1884.*)

The violations of articles 655, Nos. 2 and 3, and 849, No. 6, of the law of criminal procedure are not included in any of the grounds for annulment for breach of form specifically determined in articles 911 and 912 of said law. (*Decision of October 10, 1884.*)

Documents of another cause which is still at the stage of the *sumario*, or the preliminary portion of a process which is not that which is the basis of the action, can not be introduced into the action or brought before the court; and

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2. When the citation of the accused shall have been omitted, whether he be imprisoned or at liberty, and of the accusing party and civil plaintiff for appearance at the oral and public trial, unless said parties should have appeared in due time considering themselves cited.

3. When the presiding judge of the court should refuse to allow a witness to answer, either at a public session or in any proceeding conducted outside thereof, the question or questions asked him, if they be pertinent and have a manifest bearing upon the cause.[a]

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therefore their rejection does not give rise to the breach of form referred to in No. 1 of article 911. (*Decision of December 3, 1884.*)

An appeal for annulment of judgment based upon this number on account of the rejection of expert evidence is not admissible when at the time of proposing it the names and surnames of the experts are not stated in the written classification, and less it be requested that said experts give their testimony before the judge of their place of residence. (*Decision of April 9, 1885.*)

Evidence in criminal matters must be considered pertinent in so far as it concerns the cause in which it is introduced, because this is the legal meaning given to the word "pertinent." (*Decision of January 11, 1886.*)

It being within the power of the court to not suspend the oral trial on account of nonappearance of any of the witnesses for the prosecution and defense offered by the parties, according to No. 3 of article 747, the exercise of this power on account of not considering necessary the testimony of those presented by the defense, does not violate said provision nor is the case included among the grounds specifically mentioned in article 911. (*Decision of March 3, 1886.*)

The evidence proposed in the written conclusions having been considered pertinent and admitted by the audiencia, a subsequent refusal to take the same and the substitution thereof by the reading at the oral trial of the proceedings of the *sumario*, constitutes a real denial of pertinent proof. (*Decision of June 21, 1886.*)

In criminal matters acts which are not prior or concomitant to the moment of the commission of the crime prosecuted have no efficiency and significance; and in accordance with this principle the inadmission or impertinence of the attempt of an accused person who acknowledged in the writ in which he proposed it that such act occurred subsequent to the formation of the cause and that he even ignored it during the first instance, thus making patent that it could have had no influence upon the motives and consummation of the crime for which he was condemned, is undoubted. (*Decision of July 9, 1886.*)

[a] Although the repetition of an answer already given according to the record be pertinent and bear upon the cause, the refusal can not give rise to an appeal for annulment of judgment for a breach of form if the person intending to interpose it did not take exception thereto and make the proper protest in accordance with article 914 of the law of criminal procedure. (*Decision of June 18, 1883.*)

The fact of the defense not having been permitted to address questions to a witness, the brother of the accused, who had refused to testify in accordance with article 777, in relation with article 416 of the law of criminal procedure, does not constitute the breach of form referred to in Nos. 3 and 4 of article 911. (*Decision of May 12, 1884.*)

The rejection of questions put for the purpose of elucidating a matter and proposed as a probatory measure can constitute a form of ground for annulment only, if in addition to the circumstance of their not being captious, suggestive, or impertinent, is added that more substantial and unavoidable one of their having manifest influence in the cause and true importance for the result of the action to such an extent that their rejection may cause a lack of defense or prevent a clear cognizance or proper consideration of an important fact. (*Decision of July 29, 1886.*)

Article 190 of the law of April 20, 1888, provides that an appeal for annulment of judgment for breach of form against sentences announced by the "tribunal del jurado" lies in the cases provided for by this article and Nos. 2 and 3 of the following articles, and, furthermore, in the following cases:

1. When the verdict has not been transcribed literally in the sentence in the manner prescribed in article 97.

2. When the appellant shall have objected for the reasons mentioned in articles 77 and 111 of said law.

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4. When any question is overruled as captious, suggestive, or impertinent, not being so in fact, provided that it is of real importance for the result of the action.[a]

ART. 912. An appeal for the same cause may also be interposed:

1. When the acts which are considered proved are not clearly and specifically stated in the sentence, or there should appear a manifest contradiction between them.[b]

2. When all the points which may have been the subject of the accusation and of the defense are not decided therein.[c]

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3. When the sentence or verdict shall have been given by a lower number of justices or jurors than that required by the said law.

4. When some justice or juror shall have attended to render a decision whose challenge, with the reasons duly set forth and interposed formally and in time, should have been overruled without being heard in accordance to law, or when any of the peremptory challenges which can be made without alleging any cause shall have been improperly overruled.

[a] Although an appeal for annulment of judgment, based upon the provisions of No. 4, may be interposed as in any other number of those contained in article 911 of the law of criminal procedure, not even said appeal is admissible in accordance with the provisions of article 914 if the appellant shall not have requested the correction of the error, if possible, nor made the corresponding objection. (*Decision of March 10, 1884.*)

[b] The contradiction referred to in number 1 of the article 912 of the law of criminal procedure does not refer to the statement made in the *considerandos* of the sentence. (*Decision of March 24, 1884.*)

A sentence which considers the existence of the crime the subject of an accusation, as proved, implicitly decides the points which have been the object thereof in acquitting the accused on account of not considering him the real author thereof. (*Decisions of April 1, 2, and 3, 1884.*)

The contradiction which is a ground for annulment must exist between the acts which are declared proved. (*Decision of April 7, 1884.*)

When a chamber does not state with precision and clearness what are the acts which it considers proved it incurs the breach of form provided for in the first part of number 1 of article 912 of the law of criminal procedure. (*Decision of June 6, 1884.*)

The error which may be incurred in the sentence in defining the acts in the *considerandos* is not the contradiction referred to in number 1 of article 912 of the law of criminal procedure. (*Decision of November 28, 1884.*)

In order that the Supreme Court may consider whether the breach of form supposed to have been committed exists, it is not sufficient to say that the appeal is authorized by article 912 of the law of criminal procedure, but it is necessary to state in what case of the different ones which it contains, it is included. (*Decision of December 29, 1884.*)

The contradiction established in the last part of the number we annotate as a ground for an appeal for annulment of judgment embraces only the contradiction appearing between the acts themselves, and not the contradiction between the acts declared to be proved and the consideration which the sentencing chamber gives the same. (*Decision of May 6, 1886.*)

[c] When the only question discussed in the action, and which is the ground for an appeal for annulment of judgment for breach of form, consists in the classification of the crimes, that is to say, whether the classification should be homicide or physical injuries inflicted by violence, and it is decided in favor of the former by the sentencing court, in view of the proof and other circumstances, and considering the provisions of articles 741 and 742 of the law of criminal procedure, the second case of article 912 of the said law is not involved. (*Decision of May 5, 1883.*)

As the Supreme Court has repeated in many of its decisions, a sentence of conviction decides all the points the subject of the accusation. (*Decision of June 18, 1883.*)

When an audiencia, after stating and considering the acts resulting in a cause, including those which have been the subject of a complaint, orders an absolute dismissal, considering that such acts do not constitute a crime, an appeal based upon number 2 of article 912 of the law of criminal procedure does not lie because all the points which had been the subject of the complaint were decided

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3. When it punishes a crime more grave than that which may have been the subject of the accusation, if the court shall not have first proceeded as determined by article 733.[a]

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thereby in the proper form in order to decree the dismissal. (*Decision of June 27, 1884.*)

It appearing that the accused, having been charged in the first written classification of the public prosecutor with the crime of the infliction of less grave physical injuries, and that he appeared at the oral trial to defend himself against this charge, should have been acquitted or condemned; and the court, in dismissing the proceedings with regard to said crime, incurred the breach of form provided for in number 2 of article 912 of the law of criminal procedure. (*Decision of November 18, 1884.*)

A chamber which declares itself incompetent after the conclusion of the oral trial and after the citation of the parties for sentence without any of the latter having pleaded the want of jurisdiction, incurs the breach of form of number 2 of article 912. (*Decision of January 10, 1885.*)

The condemnation for a less grave crime implies the rejection and acquittal of another graver one. (*Decision of December 7, 1885.*)

When two separate crimes have been the subject of the accusation and of the defense to the effect of a request having been made in the first that the accused be condemned to the penalty which it was believed pertained to each of the crimes, and the defense requested an acquittal, all the points which were the subject of the accusation and of the defense must be decided in the sentence in accordance with the provisions of article 142, and a sentence not doing so contains the defect of form specified in number 2 of article 912 of the law of criminal procedure. (*Decision of December 9, 1885.*)

[a] When, notwithstanding the fact that the public prosecutor had abstained from accusing a person, believing that the less grave injury the subject of the cause was accidental, and the court, without availing itself of the privilege granted it by article 733 of the law of criminal procedure in case of its believing that the act has been classified with manifest error, condemns the former as guilty of less serious injuries, which is equivalent, according to repeated decisions of the Supreme Court, to the punishment of a crime more grave than that which has been the subject of the accusation, the breach of form referred to in number 3 of article 912 of the said law is committed. (*Decision of May 21, 1883.*)

The breach of form referred to in the third paragraph of article 912 of the law of criminal procedure exists when the sentence punishes a domestic theft—that is to say, a qualified theft included in the second case of article 533 of the Penal Code—which crime is more grave than the simple theft described and punished by number 4 of article 531 of the said code (referring to the code of the Peninsula) which had been the subject of the accusation. (*Decision of March 12, 1884.*)

The error mentioned in the third case of article 912 of the law of criminal procedure is incurred when, although the public prosecutor classifies the acts as less grave physical injuries, he modifies his conclusions at the trial, considering them as a misdemeanor included in No. 12 of article 603 of the code, notwithstanding which the audiencia, without previously proceeding in accordance with the provisions of article 733 of the law, punishes the accused as authors of the crime of less grave injuries. (*Decision of September 23, 1883.*)

No. 3 of article 912 of the law of criminal procedure, in establishing as a ground for annulment for breach of form "when in the sentence a more grave crime is punished than that which may have been the subject of the accusation if the court should not have first proceeded as prescribed by article 733," refers, as the Supreme Court has declared, to the definite classification made at the time of the trial, which is when the accusation is formulated, and not to the provisional one made before said trial, which may be modified as article 732 of the said law permits. (*Decision of February 6, 1885.*)

The vice of form referred to in the third number of article 912 is incurred by a sentence which punishes the crime classified by the fiscal in his conclusions, if the latter at the trial modifies them and recommends an acquittal because the act is not a punishable one, and the chamber does not avail itself of the privilege of article 733. (*Decision of February 6, 1885.*)

A sentencing chamber which punishes a crime of criminal negligence, when the subject of the accusation was a misdemeanor only, without having made use of the power granted by article 733, incurs the breach of form referred to in

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4. When the sentence shall have been rendered by a lower number of justices than that fixed in the law, or without the concurring votes required by the same.[a]

5. When a justice shall have attended to render judgment whose challenge should have been overruled when duly and formally interposed and based upon a legal cause.

ART. 913. An appeal for annulment of judgment for a breach of form shall not lie in actions upon misdemeanors.

ART. 914. An appeal for breach of form shall not be admissible if the party desiring to interpose it should not have demanded the correction of the fault, if possible, nor filed the proper objection subject to the provisions of the law in the cases in which it is proper.

If the ground upon which the appeal is based should be the failure to cite for sentence, the objection must be made before sentence is rendered, should there be time to object when the party notices the omission. And if the grounds should be the noncitation for the taking of some evidence or the rejection of evidence, the objection and protest must be made at the time the party shall have had occasion to observe the absence of the citation and upon being informed of the rejection of the evidence.

ART. 915. The parties referred to in article 854 may interpose this appeal.

SECTION SECOND.—*Interposition of the appeal.*

ART. 916. An appeal for annulment of judgment for breach of form shall be interposed before the sentencing court within the period of five days from the day following the last notice of the sentence.[b]

ART. 917. This appeal shall be interposed in writing and authenticated by the signatures of an attorney and solicitor, stating:

The date of the notification of the sentence.

That of the filing of the appeal.

No. 3 of article 912 of the law of criminal procedure. (*Decision of March 3, 1885.*)

For the purposes of No. 3 of article 912 of the law of criminal procedure, the greater gravity of a crime with regard to another must be considered by the respective gravity of the penalty in accordance with the graduated scales established in articles 26 and 92 of the penal code (referring to the one in force in the Peninsula), even though the two be of the same character or are included in the same chapter or sections of the said code. (*Decision of April 7, 1885.*)

The reference made in this number to article 733 shows that it is to be considered that the sentence punishes a crime more grave than that which has been the subject of the accusation whenever the provisions of this article are violated by the imposition without the previous observance previously having proceeded as prescribed therein of penalties not recommended by the accusation, the court considering that the triable acts have been classified erroneously with regard to the nature and gravity of the crime or crimes which they may constitute and not with regard to the extenuating or aggravating circumstance, nor to the participation of each of the accused in the execution of the crime. (*Decision of June 16, 1885.*)

[a] See notes to article 732.

[b] Arts. 916 et seq. of the law of criminal procedure are violated by an audiencia which admits an appeal without further proceedings and transmits the cause to the Supreme Court by virtue of a petition of the public prosecutor confined to a request for a transcript of the sentence as a preparatory means for the interposition for appeals for annulment of judgment for a violation of law and breach of form, because in such a case said appeal has not been interposed. (*Decision of December 14, 1883.*)

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The article of the law authorizing it.

The breach of form supposed to have been committed.

The objection made for its correction and the date thereof, if the violation should be of those which require this requisite.

If the appellant be the private complainant or the civil plaintiff, he must also state in the appeal that, in case the court admits the appeal, he is ready to present to the third chamber of the Supreme Court, within the period mentioned in article 859, the document showing that he has deposited in the public institution provided therefor one thousand pesetas, if the crime be a public one, and five hundred if it be of those which can be prosecuted at the instance of a party.

If the accused be the appellant, he shall be exempted from the obligation of making a deposit. If the public prosecutor shall have interposed the appeal, the complainant or private accuser shall not be obliged to make it.

ART. 918. The sentencing court shall examine without hearing the parties:

1. If the appeal has been interposed after final sentence has been pronounced.

2. If it has been interposed within the period prescribed by law.

3. If it is based upon any of the causes mentioned in articles 911 or 912.

4. If the violation was duly excepted to in cases in which this is necessary.

ART. 919. If all the circumstances mentioned in the foregoing article are attendant, the chamber, on or before the third day, shall decree the admission of the appeal and order that the parties be cited for appearance before the Supreme Court within a period of sixty days from the date of record of the transmittal to the Supreme Court *ex officio* of the documents necessary for the hearing and determination of the appeal.

For this purpose the chamber shall order that a literal transcript be made only of that part or details and portions of the record to which the appeal is confined and in which it is alleged that there has been a breach of form, preceded by a succinct statement of the cause, which transcript, drafted on official paper and containing a statement of the agreement of the parties with regard to the fidelity of the copy of the record, in so far as the appeal is concerned, shall be transmitted by the chamber to the Supreme Court by the first direct mail after the day on which the said agreement is established.

The parties must state their agreement with regard to the literal portion of the transcript, or what they may believe should be added to the same, within the period of five days, which can not be extended, and no other remedy but a complaint shall be admitted against the decision of the chamber, in accordance with the provisions of articles 863, 865, et seq., in so far as applicable with regard to the refusal of certificates.

The transmission of the transcript shall be entered upon the record in accordance with the provisions of article 861.

If any of the circumstances mentioned in the foregoing article should not be attendant, the appeal shall not be admitted.

ART. 920. The interposition and admission of an appeal for breach of form shall produce the effect of staying, until its final decision,

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any proceedings for the execution of the sentence from which it may have been taken, as well as the hearing and determination of the appeal for violation of law which may have been prepared by any of the parties.

SECTION THIRD.—*Remedy of complaint on account of the denial of an appeal for annulment of judgment for breach of form.*

ART. 921. When the sentencing court shall deny the admission of an appeal for breach of form, it shall do so by decree, of which a copy shall be given to the appellant at the time notice thereof is served upon him.

ART. 922. If the appellant should consider himself injured by the denial of the appeal, he may complain to the third chamber of the supreme court, informing the sentencing court of his action, for the purposes of the provisions of article 863.

This remedy shall be heard and decided in the manner prescribed in said article 863 and in the following:

ART. 923. When the chamber shall reverse the order of denial of the admission it shall order the court to transmit to it a transcript of the cause, with the necessary data, in accordance with article 919. Should it affirm the order, it shall communicate its decision to the sentencing court for the proper purposes.

There shall be no remedy whatsoever against these decisions.

When the facts alleged as a ground for the complaint are false the chamber may impose upon the private complainant a fine of not less than two hundred and fifty pesetas nor more than one thousand.

If an attorney should be liable therefor, the disciplinary correction which may be proper shall be imposed upon him.

SECTION FOURTH.—*Hearing of the appeal.*

ART. 924. An appeal for breach of form shall be heard by the third chamber of the Supreme Court, in the manner and according to the procedure established for appeals for violation of law in the fifth section of the first chapter of this title, in so far as its provisions are not modified by the following articles.

ART. 925. The record of proceedings shall be delivered to the appellant for examination for five days, and for a similar period to each of the parties and to the public prosecutor.

Upon the return of the cause by the appellant he can not allege new grounds for annulment.

The delivery referred to in the first paragraph of this article shall not take place if the appellant be the private complainant and he shall not have presented, as yet, the document proving that he has made the deposit prescribed by article 917.

But if he shall have been declared a poor person or insolvent it shall suffice that he bind himself to answer for the amount of the deposit if his circumstances improve.

ART. 926. When the period of the summons shall expire without the appellant having entered an appearance, or if the latter be the private complainant or civil plaintiff, he shall not prove that he has made the deposit or does not constitute the obligation mentioned in the foregoing article *apud acta*, the appeal shall be considered abandoned and

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the costs shall be taxed against the private appellant and the cause returned to the court.

ART. 927. If the appellant be poor he may appear in person, requesting the appointment of an attorney and solicitor for his defense. In such case the provisions of article 876 shall be observed.

ART. 928. After the period for the delivery of the record has expired, and whether or not the parties state that they have examined the appeal and the data in the case, the chamber shall appoint as *ponente* the justice whose turn it may be, to whom the cause shall be referred for a period of five days, and upon its return a day shall be set for the hearing.

SECTION FIFTH.—*Decision of the appeal.*

ART. 929. Upon the day set for the hearing the secretary shall read a statement of the sentence, the private votes, the instrument interposing the appeal, and of that part of the cause which may be considered necessary to give a proper idea of the violation alleged and the grounds therefor.

Upon the conclusion of the reading by the secretary, counsel for the parties and the prosecuting official shall speak. The latter shall speak first unless he shall have interposed the appeal.

ART. 930. When the chamber finds that the violation upon which the appeal is based has been committed, it shall declare it well taken and shall order the return of the deposit, if made, and of the transcript of the cause to the lower court, in order that, beginning from the stage of the proceedings where the violation was committed, it may hear and determine it in accordance with law.

ART. 931. If the chamber should find that the alleged violation has not been committed, it shall declare the appeal not well taken, and shall adjudge the cost against the private appellant and the forfeiture of the deposit, if any shall have been made, or the loss of the amount it represents when his circumstances improve, and shall order the return of the transcript of the cause to the sentencing court.

ART. 932. The provisions of articles 905 and 906 of this law shall be applicable to appeals for annulment of judgment for breach of form.

ART. 933. The provisions of the various sections of this chapter shall be observed in appeals for breach of form interposed by the public prosecutor.

CHAPTER III.—*Interposition, hearing, and decision of an appeal for annulment of judgment for violation of law and for breach of form.*

ART. 934. The provisions of this law with regard to appeals for annulment of judgment for a violation of law and for breach of form shall apply to appeals which are based both upon a violation of law and a breach of form, with the modifications prescribed in this section.

ART. 935. Appeals for annulment for a violation of law and for a breach of form shall be interposed within the period fixed in article 916, the grounds for the appeal for a breach of form being stated in accordance with article 917, and that for a violation of law being designated.

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ART. 936. The sentencing court, in view of the appeal, shall admit or deny only the appeal for annulment of judgment for breach of form in accordance with the provisions of articles 918 and 919, considering the appeal for violation of law to be announced.[a]

ART. 937. If the court admits the appeal, it shall transmit to the third chamber of the Supreme Court a transcript of the cause with the data mentioned in article 919. In such case the appeal for annulment of judgment for a violation of law shall be considered as prepared, the same legal period running for both appeals.

ART. 938. If the court shall deny the appeal, the persons interested may file a complaint before the third chamber of the Supreme Court against the decree of denial at the time and in the form prescribed by article 922.

ART. 939. If the third chamber of the Supreme Court shall reverse the decree of denial, it shall direct an order to the court to transmit to it a transcript of the cause in accordance with the provisions of article 923. In such case the appeal for annulment of judgment for a violation of law shall also be considered as prepared.

ART. 940. If the third chamber should affirm the decree of denial, it shall communicate its decision to the court for the proper purposes.

ART. 941. The effect of the decree confirming the denial shall be, with regard to an appeal for annulment of judgment for a violation of law, the following:

1. To render impossible the interposition thereof when the decree confirming that denying the admission of an appeal for annulment of judgment for breach of form shall have been based upon the presentation of a petition proposing the last-named appeal, and preparing the other outside of the legal period.

2. To render its interposition possible in a proper case and at the proper time, when a decree confirming that denying the admission of the appeal for annulment of judgment for breach of form shall have been based upon the nonattendance of all the circumstances mentioned in article 918.

ART. 942. In the latter case, if the appellant should so request within three days from the date notice is served upon him of the affirmation of the decree of denial, the second chamber of the Supreme Court shall order the sentencing court to issue and deliver to the appellant, or in a proper case to transmit within a period of three days, a transcript of the decision in order that the appeal for violation of law may be continued and that the parties be cited for the purpose, faithfully complying with the provisions of articles 858 and 859 of this law.

ART. 943. An appeal for breach of form having been admitted by the sentencing court, and a transcript of the cause transmitted to the third chamber of the Supreme Court, it shall be heard and decided in accordance with the provisions of sections fourth and fifth of chapter 2 of this book.

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[a] An audiencia which orders the transmittal to the second chamber of the Supreme Court of a certificate of a sentence for the interposition of an appeal for annulment of judgment for violation of law, admitting at the same time that for a breach of form, instead of confining itself to considering the former as announced, as prescribed by article 936 of the Laws of Criminal Procedure, does not comply with said article. (*Decision of September 25, 1885.*)

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ART. 944. When the third chamber declares an appeal for breach of form not well taken, it shall adjudge the costs against the private appellant and the forfeiture of the deposit, should he have made one, and shall order that the cause be transmitted to the second chamber, which, upon the receipt thereof, shall order its reference to the appellant for a period of five days, in order that he may interpose the appeal for violation of law, in accordance with the fourth section of the first chapter.

ART. 945. The appeal for violation of law having been formulated, it shall be heard in accordance with the provisions of the fifth section of the said first chapter.

ART. 946. If the appellant should not have been authorized to litigate as a poor person, upon returning the cause interposing the appeal he must produce the document showing that he has made the proper deposit in accordance with the provisions of article 875.

CHAPTER IV.—*Appeals for annulment of judgment in causes involving the death penalty.*[a]

ART. 947. An appeal for annulment of judgment for the benefit of the criminal shall be considered as admitted *de jure* against sentences not rendered by the Supreme Court or its second chamber, by which the penalty of death is imposed.

ART. 948. The criminal court, upon the expiration of the period prescribed in article 916, even though an appeal for annulment of judgment shall not have been interposed, shall transmit the cause to the second chamber of the Supreme Court, together with a certificate of the reserved votes if there be any, or a negative one in a proper case.

ART. 949. If within the period of five days after the receipt of the cause by the second chamber of the Supreme Court, counsel appointed by the criminal should appear and request an examination in order to sustain the propriety of the appeal, they shall be considered as parties and the cause shall be ordered referred to them for a period of five days. Should they not appear within said period, the chamber shall order *ex officio* the appointment of a solicitor and attorney to defend the criminal, the process being delivered to them for a like period of five days.

Upon returning the cause, counsel for the criminal shall state whether any of the grounds which authorize the appeal exists, whether for violation of law or for breach of form, in accordance with the provisions of this law.

ART. 950. The cause shall be delivered to the other parties, if they shall have entered an appearance, and to the public prosecutor for the same period and purpose.

ART. 951. Upon the return of the cause by the parties, they shall plead the grounds in the same instrument which may exist, if there be any in their opinion for an annulment of the sentence, whether for a breach of form or a violation of law.

The second chamber, after the ordinary proceedings, may declare the appeal for violation of law or for breach of form to be well taken even though neither the parties who have entered an appearance nor the public prosecutor shall have sustained its propriety.

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[a] See G. O. No. 19, Hdqrs. Dept. P. R., Dec. 2, 1898.

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When the chamber shall declare an appeal for breach of form to be well taken, it shall at the same time issue the order prescribed by article 930.[a]

ART. 952. The hearing of appeals interposed by the parties in causes involving the death penalty, shall conform to the rules indicated in this Chapter.[b]

ART. 953. When it shall be declared that the appeal does not lie upon any grounds, the chamber shall order the record to be transmitted to the *fiscal*, and in view of the opinion of the latter and the merits of the case, if it should find any ground of equity to advise that the final sentence be not executed, it shall recommend to His Majesty, through the Colonial Minister, the commutation of the penalty.

TITLE II.—THE APPEAL FOR REVIEW.

ART. 954. An appeal for review shall lie from final sentences in the following cases:

1. When two or more persons are serving a sentence by virtue of contradictory sentences for the same crime which could not have been committed by more than one person.
2. When a person is serving a sentence as the principal, accomplice, or accessory to the homicide of a person whose existence is established after the sentence.
3. When a person is serving a sentence by virtue of a judgment the grounds for which may have been a document afterwards declared false by a final sentence in a criminal cause.

ART. 955. An appeal for review may be taken by the persons punished and by their spouses, descendants, ascendants, and brothers and sisters by applying to the Colonial Minister with a petition setting forth the grounds therefor.

ART. 956. The Colonial Department, after preparing the proceeding, may order the *fiscal* of the Supreme Court to interpose the appeal when there are sufficient grounds therefor, in its judgment.

ART. 957. The *fiscal* of the Supreme Court may also interpose the appeal before the second chamber, whenever he has information of any case in which it lies, without the necessity of such order.

ART. 958. In the case of No. 1 of article 954, the chamber shall declare the contradiction between the sentences, if it really exists, annulling both, and shall order the hearing of the cause *de novo* by the court to which the cognizance of the crime may pertain.

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[a] In causes involving the death penalty, the declaration of the proven acts must be made in the *resultandos* of the sentence. (*Decision of June 25, 1885.*)

[b] Neither article 952 nor the second paragraph of article 949 of the law of criminal procedure authorize the pleading of grounds and causes with regard to the form or the merits which are not included in articles 849, 911, or 912 against final sentences condemning to the penalty of death.

A violation of articles 2 and 299 of the said law would signify only a deficiency in the conduction of the *sumario*, and the omissions committed during this period of the proceedings can not constitute a ground for the annulment of a final sentence, because they may be cured *ex officio* and a rehearing ordered, or they may be supplied at the instance of the parties taking part therein by means of adequate and pertinent proof. (*Decision of September 20, 1886.*)

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In the case of No. 2 of the said article, the chamber shall annul the final sentence after the identity of the person whose death may have been punished is established.

In the case of No. 3 of the said article, the chamber shall issue a similar decree, in view of the final judgment declaring the falsity of the document, and shall order the proper court to which the cognizance of the crime may pertain to hear the cause *de novo*.

ART. 959. The appeal for review shall be conducted by hearing the *fiscal* once only in writing and the persons punished another time, who must be cited, should they not first appear. When they request the attachment of documents to the record, the chamber shall order what it may deem proper hereon. Thereupon the appeal shall follow the procedure prescribed for an appeal for annulment of judgment for violation of law, and the chamber shall, with or without oral argument, as it may order in view of the circumstances of the case, render sentence, which shall be irrevocable.

ART. 960. If, in consequence of the final sentence which has been annulled, the condemned person should have suffered some corporal penalty, if another one should be imposed upon him in the new sentence, the time of that previously served and the importance thereof shall be considered in the fulfillment of the latter.

ART. 961. Even though the person punished shall have died, his widow, ascendants or descendants, legitimate, legitimized, or natural acknowledged, may request a review of the action for any of the causes mentioned in article 954 for the purpose of rehabilitating the memory of the decedent and for the punishment of the real culprit in a proper case.

Book Sixth.—PROCEEDINGS IN ACTIONS UPON MISDEMEANORS.

TITLE FIRST.—ACTIONS UPON MISDEMEANORS AT FIRST INSTANCE.

ART. 962. As soon as the municipal judge shall have information of the commission of any of the misdemeanors mentioned in Book III of the penal code which can be prosecuted at the instance of the Government, it shall order the municipal fiscal, the complainant, if there be any, the presumed culprit, and the witnesses who can testify as to the acts to appear for an oral trial, setting a day and hour for the hearing.

ART. 963. In the same manner he shall order the holding of an oral trial, but without summoning the municipal fiscal, when the misdemeanor can be prosecuted only at the instance of a legitimate party and said party requests the punishment.

ART. 964. The trial must be held in the court room of the municipal court within three days following the date upon which the judge shall have had notice of the commission of the misdemeanor.

The municipal judge may, nevertheless, at his own instance or on motion of a party, set a day beyond said period for the holding of a trial, if there be sufficient cause therefor, which must appear in the proceedings.

If some important witness or one of the parties residing within the municipal district should be physically unable to appear at court, the judge may also order the holding of the trial at the point he may consider advisable, stating his reasons for his decision.

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ART. 965. A copy of the complaint, if any shall have been filed, shall be attached to the citation served upon the presumed culprits, and in said citation shall be stated that the person cited must appear at the trial with the evidence in his possession. Twenty-four hours at least must elapse between the service of the citation upon the presumed culprit and the time for holding the trial, if the person cited resides within the municipal district, and one day more for every 20 kilometers, if he resides without it.

ART. 966. When the persons cited as parties and the witnesses shall not appear, nor allege sufficient cause for failing to do so, they may be fined the amount which the municipal judge may fix, not to exceed 62.50 pesetas.

The same fine shall be incurred by the experts who do not appear on the call of the municipal judge.

ART. 967. The testimony of witnesses and presumed culprits, residing beyond the municipal district, shall be taken by means of letters rogatory, with a citation of the private complaint, if there be any, and in the presence of the public prosecutor, if the misdemeanor can be prosecuted by the Government.

Said depositions shall be taken and drafted with the formalities respectively established in this law.

ART. 968. In case that for sufficient cause it should not be possible to hold the oral trial upon the day fixed, or that it can not be concluded at one sitting, the municipal judge shall set the first day possible for the holding or continuation thereof, informing the persons interested of the same.

ART. 969. The trial shall be public and shall be begun by the reading of the complaint, if there be any, followed by an examination of the witnesses called and the other evidence proposed by the complainant, denouncer, and municipal *fiscal*, if present, shall be taken, provided that the judge considers the same admissible. Thereupon the accused and the witnesses he may present in his defense shall be heard, and the other evidence shall be taken which he may offer and which is pertinent, the provisions of this law in so far as applicable being observed. Thereupon the parties shall state verbally what they may deem proper in support of their respective contentions, the public prosecutor, if present, speaking first, and then the private complainant, and finally the accused.

The municipal fiscal shall attend trials upon misdemeanors, provided he is cited in accordance with article 962.[a]

ART. 970. If the person presumed to be guilty of a misdemeanor should reside outside of the municipal district he shall not be obliged to appear at the trial, and he may address to the municipal judge a petition pleading what he may deem proper in his defense, and empower a person to present at said proceeding the evidence for his defense which he may have.

ART. 971. The absence of the accused shall not stay the holding nor the decision of the trial, provided that it shall appear that he has been cited with the formalities prescribed in this law and with the requisites of article 965, unless the municipal judge, at his own

[a] The violation of this article being of mere examination and procedure, is not admissible for annulment in an appeal for violation of law against a final judgment. (*Decision of November 13, 1883.*)

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instance or on motion of a party, should consider the deposition of the former necessary.

ART. 972. A daily record shall be made of each trial, stating clearly and succinctly the proceedings had, which shall be signed by all those present thereat who are able to do so; for which purpose the municipal judge shall take the necessary measures to prevent their absenting themselves until said record is made.

ART. 973. Within the period fixed in the second paragraph of article 203 the judge shall pronounce sentence.

ART. 974. The sentence shall be carried out by the municipal judge immediately after the period fixed in the fourth paragraph of article 212 shall have expired if none of the parties shall have appealed.

ART. 975. If an appeal shall have been taken it shall be admitted both for a review and a stay of proceedings to the proper judge of examination to which the municipal court may pertain, the interposition of the appeal being made a matter of record by the municipal secretary and signed by the appellant, or by a witness at his request should he not be able to do so.

ART. 976. After the admission of the appeal the original proceedings shall be sent by the municipal judge to the examining judge, such transmission being communicated to the municipal fiscal if he shall have taken part in the trial, and to the other persons interested, all of them being cited, in order that within the period of five days they may appear before the examining judge and allege their rights.

TITLE II.—ACTIONS UPON MISDEMEANORS IN SECOND INSTANCE.

ART. 977. After the proceedings have been received by the examining judge and upon the expiration of the period of the summons, if the appellant shall have entered an appearance, he shall set a day for the hearing, ordering that they be exhibited to the parties in the office of the secretary for a period of forty-eight hours. If the appellant should not have entered an appearance within the period of the summons, the judge shall declare the appeal to have been abandoned, and shall return the proceedings to the municipal judge at the cost of the former.

The municipal fiscal who may be delegated therefor by the fiscal of the proper audiencia shall appear on behalf of the department of public prosecution at this second instance. The department may also be represented by any of its assistants of the said audiencia appointed by the fiscal when the seat of the court of examination is the same town as that of the audiencia.

ART. 978. The hearing shall be public and shall begin with the reading of the proceedings transmitted. Thereupon the fiscal shall be heard, whose attendance shall be necessary if the misdemeanor be of those which must be prosecuted by the government, or the persons interested, or their legitimate representatives if they attend; and thereupon sentence shall be pronounced, which shall be communicated to said fiscal and to the persons interested present.

ART. 979. No other evidence shall be admitted at second instance except that which, having been proposed at first instance, could not have been taken for a cause beyond the control of the person proposing it.

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ART. 980. In order to secure the evidence referred to in the foregoing article, a period not to exceed ten days may be granted, the necessary mandates or letters rogatory being issued in order that it may be taken.

ART. 981. There shall be no other remedy but an appeal for annulment of judgment for violation of law against a sentence rendered at second instance.

If, upon the expiration of the period fixed in the fourth paragraph of article 212, the appeal mentioned should not have been prepared, the judge of examination shall order the return to the municipal judge of the original proceedings, accompanying thereto a certificate of the sentence rendered, in order that the latter may proceed to its execution.

ART. 982. The municipal judges shall keep all the proceedings of each trial and shall make a collection thereof at the end of every year, forming with the same the necessary volumes, which, after being properly bound, shall be preserved in the archives of the said court.

Book Seventh.—EXECUTION OF SENTENCES.

ART. 983. Every accused person acquitted by a sentence shall immediately be placed at liberty, unless the exercise of a remedy which produces a stay of execution, or the existence of other legal grounds shall render the postponement of the imprisonment necessary, which shall be ordered in a writ setting forth the grounds for the same.

ART. 984. The execution of a sentence in actions upon misdemeanors pertains to the municipal judge who may have taken cognizance of the trial.

The judge of examination who shall have taken cognizance on appeal of an action upon a misdemeanor, shall transmit a certified copy of the final sentence to the proper municipal judge for the purposes of the foregoing paragraph.

ART. 985. The execution of a sentence in causes involving crimes pertains to the court which shall have pronounced the final sentence.

ART. 986. Notwithstanding the provisions of the foregoing article, a sentence rendered after an annulment by the second chamber of the Supreme Court, shall be executed by the court which shall have pronounced the sentence annulled, in view of the certificate transmitted to it by the said chamber for the said purpose.

ART. 987. When the court to which the execution of the sentence pertains, should not itself be able to take all the measures necessary, it shall commission the judge of the district or circuit in which they are to be carried out to do so.

ART. 988. When a sentence is final, in accordance with the provisions of article 141 of this law, the judge or court which rendered it shall make a declaration to this effect.

After this declaration has been made, the execution of the sentence shall be proceeded with, even though the criminal be subject to another cause, in which case he shall be conducted, when necessary, from the penal institution in which he is serving his sentence, to the place where the pending cause is being held.

ART. 989. When the penalty imposed in a final sentence is that of death, the chamber of the Supreme Court shall not transmit the cer-

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tificate mentioned in article 986 until the Colonial Minister shall have acknowledged receipt of the report referred to in article 953.

After the penalty of death has been executed, a record shall be made in the proceedings by the secretary who shall have attended it, and shall immediately inform the Colonial Department and the Supreme Court thereof.

ART. 990. Penalties shall be executed in the form and at the time prescribed in the penal code and the regulations.[e]

It is the duty of the judge or court upon whom this code imposes the duty of enforcing the execution of a sentence, to adopt without delay the measures necessary in order that the person condemned enter the penal institution provided therefor, for which purpose he shall call upon the assistance of the administrative authorities, who must furnish the same without any excuse or pretext whatsoever.

The jurisdiction of the judge or court to enforce the compliance of the sentence excludes that of any administrative authority until the person condemned shall have entered the penal institution or is taken to the place where he is to serve his sentence.

Courts shall furthermore exercise the powers of supervision which the laws and regulations vest in them with regard to the manner of fulfilling penalties.

ART. 991. Confined persons who are supposed to be in a state of insanity shall be placed under observation, a report being prepared for the purpose by the chief of the penitentiary in which they may be, stating the acts and grounds which may have given rise to a suspicion of insanity, and in which shall be embodied the first judgment, or at least a certificate of the physician who may have examined and observed them.

ART. 992. After the gravity of the suspicion has been established, the chief of the penitentiary shall immediately inform thereof the presiding judge of the sentencing court from which the confined persons came, transmitting a literal copy of the proceedings had, without prejudice to informing the general administration of penal institutions thereof.

ART. 993. The presiding judge shall transmit the proceedings referred to in the foregoing article to the sentencing court, which shall immediately hear the fiscal and the private accuser in the cause, if there be any, and counsel for the convict shall be allowed to appear and shall be heard, or one shall be appointed *ex officio* for this case, should he not have any; it shall order the fullest and most formal investigation of the acts and the physical and moral condition of the patients by the same legal means of proof which would have been

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[e] By a royal decree of April 9, 1888, it was ordered:

"ART. 1. The order of preference for the fulfillment of penalties which are simultaneously imposed upon the same criminal must be fixed by the respective court; but if the circumstances have not permitted this to be done, the Department of Grace and Justice shall observe the order established in article 89 of the penal code.

"ART. 2. When a criminal is serving one sentence and another heavier one is imposed upon him, the fulfillment of the former shall be suspended at once, in order that he may extinguish the latter, leaving the balance of that suspended for fulfillment upon the termination of the greater one.

"ART. 3. Whenever the provisions of this decree are made use of, the court or courts which shall have sentenced the criminal shall be immediately informed thereof."

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employed if the incident had occurred during the course of the cause, the judge of examination of the district in which the confined persons may be being commissioned for the purpose.

ART. 994. After the incident referred to in the foregoing articles has been heard in a contradictory action, if there be opposition, and in the ordinary form if there be none, and after hearing the sworn statements of the experts in the art of curing, and, in a proper case, of the Academy of Medicine and Surgery, the proper decision shall be rendered. The decision shall be communicated to the head of the penitentiary who, if the insanity shall have been declared, shall transfer the insane criminal to the proper institution, all without prejudice to complying with the provisions of the penal code if at any time the lunatic shall recover his reason.

ART. 995. If the penalty imposed be that of civil interdiction, the judge or court shall take care that the following rules upon the civil effect of the interdiction be observed:

1. If the person punished by the civil interdiction should be single and emancipated, he shall be assigned, according to his age, an exemplary or ordinary curator, in order that he may administer his property and apply the proceeds thereof in so far as necessary to meet his obligations.

2. The same shall be observed if the person punished be married and is separated from his spouse by a decree of divorce.

3. The appointment of curator in the cases referred to in the two preceding rules shall be made subject to the provisions of the law of civil procedure.

4. If the convict should be married and not separated from his wife by a decree of divorce, the latter shall take charge of his administration of the property of the conjugal partnership.

If the wife of the convict should be under legal age, she shall be assigned a curator, preference being given for this charge successively to the father, mother, grand parents, brothers, and sisters and nearest relatives of the minor.

5. The property of the convict belonging to the class included in Art. 201 of the law of civil procedure can not be alienated, mortgaged, pledged, nor incumbered, except in the manner and with the formalities prescribed in articles 2011 et seq. of the said law.[a]

6. The provisions of the foregoing rule shall also be observed with regard to the property of the same character of the wife of a convict under legal age.

7. A wife of legal age may freely dispose of the property of any kind belonging to her.

8. The minor children of the convict shall be subject to the power of their mother, and should they not have any, to the authority of the tutor or curator, who shall be the same who was appointed for the father.

9. A convict who shall have been discharging the duties of a tutor or curator shall discontinue his functions, and the incapacitated minor shall be assigned a new guardian.

10. A convict shall also discontinue the administration of the property of another which he may have under his charge for any other reason.

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[a] See articles referred to in Appendix III.

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ART. 49. If the person sentenced should not have property to satisfy the pecuniary liabilities included in Nos. 1, 3, and 5 of the preceding article, he shall be subject to a subsidiary personal liability at the rate of one day for every 12½ pesetas, according to the following rules:

1. If the principal penalty imposed is to be undergone by the criminal confined in a penal institution, he shall continue therein, although said detention can not exceed one-third of the term of the sentence, and in no case can it exceed one year.

2. If the principal penalty imposed is not to be undergone by the criminal in a penal institution and its duration is fixed, he shall continue subject, for the time mentioned in the preceding article, to the same deprivations of which said penalty must consist.

3. If the principal penalty imposed should be a censure, fine, or caution, the insolvent guilty person shall be confined in the district jail for a term which can not exceed six months in any case, should he have been prosecuted for a crime, or fifteen days should he have been prosecuted for a misdemeanor.

ART. 50. The subsidiary personal liability on account of insolvency shall not be imposed upon the person condemned to a penalty higher in the general scale than that of *presidio correccional.*

ART. 51. The personal liability which the criminal may have incurred by reason of insolvency shall not exempt him from the reparation of the injury caused and indemnification of damages if his pecuniary circumstances should improve, but it shall exempt him from the other pecuniary liabilities included in numbers 3 and 5 of article 48.

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ART. 126. He who derives by a gratuitous title some benefit from the effects of a crime or misdemeanor is obliged to pay an indemnity to the extent of the benefit received.

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ART. 200. The public official who, not being a judicial authority and the constitutional guaranties not having been suspended, shall detain a person for a crime and shall not deliver him to the judicial authority within the twenty-four hours after the detention took place, shall respectively incur the penalties next higher in degree than those prescribed in the said article 198.

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ART. 486. No one can institute an action for calumny or contumely committed in judicial proceedings without the previous permission of the judge or tribunal having cognizance thereof.

No one shall be punished for calumny or contumely unless on complaint of the offended party, except when the offense is directed against the public authority, corporations, or determined classes in the State, and in the cases prescribed in Chapter V of Title III of this book.

A person guilty of calumny or contumely against individuals shall be relieved from the penalty imposed by the pardon of the offended party.

For the purposes of this article the sovereigns and princes of friendly or allied nations, their diplomatic agents, and foreigners with a public character, that, according to treaties, should be included in this provision, shall be considered as authorities.

A special initiative of the Government must precede any action relating to the cases mentioned in the foregoing paragraph.

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ART. 502. Any person who, cases permitted by law being excepted, shall without sufficient reason apprehend or detain a person in order to turn him over to the authorities, shall be punished with the penalties of *arresto menor* and a fine of from 325 to 3,250 pesetas.

This article is not applicable to those apprehending the slaves or serfs of others, who are fugitives, in order to deliver them to their masters or the authorities, in the cases prescribed in the regulations, provided that the delivery be made within the term of seventy-two hours after the capture.

Fugitives shall be considered those of whose flight notice shall have been given by their masters or patrons to the local authorities, by publication in the newspapers, or that are found three leagues away from the farms upon which they were employed without a permit from their master, manager, or overseer or with a permit whose term of license had already expired.

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APPENDIX III.

ARTICLES OF THE LAW OF CIVIL PROCEDURE REFERRED TO IN THE LAW OF CRIMINAL PROCEDURE.

SECTION IV.—*Remedy of complaint against administrative authorities.*

ART. 116. The governors-general of the islands of Cuba and Porto Rico are the only authorities which may raise questions of positive or negative competencies in the name of the administration against superior or inferior courts exceeding their jurisdiction in cases where they invade the powers pertaining to administrative officials.

ART. 117. Positive or negative questions of competency which the administration may raise against judges or courts shall be heard and determined in the manner prescribed by the laws and regulations relating thereto.

ART. 118. Judges or courts can not raise questions of competency against the officials of the administrative service.

Nevertheless, they may maintain the jurisdiction and powers vested in them by the constitution and laws, and they may complain against the invasions of said authorities by means of appeals to the Government.

ART. 119. Remedies of complaint may be sought—

1. At the instance of the party injured.
2. At the instance of the department of public prosecution.
3. Officially (*de officio*).

ART. 120. The chambers of administration of the audiencias and that of the Supreme Court only may seek the remedy of complaint against the invasions of the administration in judicial powers.

ART. 121. Municipal courts and those of first instance, when their powers are invaded by the administrative authorities, shall inform the chamber of administration of the audiencia thereof, in order that the latter may seek the remedy of complaint, if it considers it proper.

For this purpose the municipal courts shall forward to those of first instance of their judicial district the record of the proceedings containing the facts relative to the abuse of power committed by the agent of the administrative service, and the latter shall forward the same with their report to the proper audiencia.

When the proceedings have been initiated in the courts of first instance they shall be forwarded directly to the audiencia.

If they should have been instituted in the chambers of justice of the audiencias or of the Supreme Court, they shall be referred to the respective chamber of administration after their conclusion.

ART. 122. The chambers of administration of the audiencias, after receiving the proceedings referred to in the foregoing article, or in view of the proceedings commenced or prosecuted before them, and that of the Supreme Court, in a proper case, shall forward the same to the department of public prosecution for a report thereon with precedence over everything else.

ART. 123. In view of said report, and after completing the proceedings, if necessary, the chambers of administration of the audiencias, or that of the Supreme Court, in a proper case, shall decide whether the remedy of complaint should or should not be sought.

If they decide that said remedy should be sought, they shall do so in a statement containing the reasons, unless they should accept the report of the department of public prosecution without any other addition.

ART. 124. The Government shall decide these disputes in the manner prescribed in the laws and regulations.

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TITLE III.—APPLICATIONS TO CIVIL COURTS FOR MODIFICATION OF ACTIONS OF ECCLESIASTICAL COURTS.

ART. 125. An application for the modification of the action of an ecclesiastical court may be made when an ecclesiastical judge or court hears, or attempts to hear, a secular cause not subject to ecclesiastical jurisdiction, or attempts to execute any judgment, by attachment or sale of property, pronounced in any matter within his or its jurisdiction, without seeking the aid of the ordinary jurisdiction.

ART. 126. The audiencias of Cuba and Porto Rico shall pass on applications for the modification of the action of the Nunciature, or of the higher ecclesiastical tribunals of the court, and the audiencias on those relating to the action of other ecclesiastical judges or courts of their respective districts.

Against the decisions rendered thereon by the Supreme Court, or by the audiencias, there shall be no further remedy.

ART. 127. The following persons may apply for the modification of the action of ecclesiastical courts:

1. Those who consider themselves injured by the usurpation of powers made by an ecclesiastical judge or court.

2. The public prosecutors of the audiencias at their own instance or upon the request of that of the Supreme Court.

ART. 128. The municipal public prosecutors (*fiscales*), deputy public prosecutors (*promotores fiscales*), and the judges and courts of the ordinary jurisdiction can not directly make application for the modification of the action of an ecclesiastical tribunal.

When the above-mentioned officials should learn that some ecclesiastical judicial authority has interfered in any matter foreign to its jurisdiction, they shall apply to the public prosecutors of the audiencias or to the one of the Supreme Court, according to their respective powers, furnishing the data and information they may have in order that they may make the application, should they consider it proper.

ART. 129. Persons who consider themselves injured by an ecclesiastical judge or court, and who desire to make an application for the modification of his or its action, shall do so in the manner prescribed by this law.

ART. 130. The department of public prosecution shall make the application directly and without any preparation whatsoever.

ART. 131. The person injured shall prepare the application before the ecclesiastical judge or tribunal, requesting, in a signed petition, that said ecclesiastical court desist in the hearing of the matter and forward the record or the proceedings already had to the competent judge, stating that if this be not done, royal protection against his action will be sought.

ART. 132. When the ecclesiastical judge or court should deny the petition made in accordance with the foregoing article, the person injured may demand a certified copy of the ruling of denial, and after it has been obtained the application shall be considered as prepared.

ART. 133. If the ecclesiastical judge or court should refuse to issue said certificate, or not issue an order desisting from hearing the matter, the person injured may file a complaint in the audiencia within the territory of which the former exercises his or its jurisdiction, in accordance with the provision of this law.

ART. 134. The court before which the complaint is made, if competent to pass upon the application, shall order the ecclesiastical judge or court to deliver the certificate to the appellant within three days after the receipt of the royal order addressed to him for that purpose.

ART. 135. If the ecclesiastical judge or court should not comply with the order mentioned in the foregoing article, a second royal order shall be sent to the same, threatening said ecclesiastical judge or court with the penalty prescribed for this case in the Penal Code.

ART. 136. If the second royal order should not be obeyed, the court taking cognizance of the application shall order the judge of first instance of the judicial district in which the ecclesiastical judge or tribunal resides to recover the record of the proceedings and forward the same, and immediately begin the institution of the proper criminal action.

In such case the application for modification of the action of the ecclesiastical court shall be considered as made by the transmission of said record.

ART. 137. When proof of the denial decreed by the ecclesiastical judge or tribunal has been presented before the proper court, or when the application

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has been directly made by the department of public prosecution, a decision shall be rendered admitting or denying the admission of said application.

ART. 138. The court shall order the admission when there are reasons leading it to believe that the ecclesiastical judge or tribunal has gone beyond the limits of his or its jurisdiction and powers. Otherwise it shall declare that the appeal was not well taken.

ART. 139. In the same order in which the court admits the application, it shall require by royal order that the ecclesiastical judge or tribunal transmit the records within three days, unless they should already be before the court as a consequence of the fulfillment of the prescription of article 136.

ART. 140. In the royal order issued in accordance with the provisions of the foregoing article, the ecclesiastical judge or tribunal shall be requested to cite the parties to appear within ten days, if willing, which period can not be extended, before the court hearing the application, for the purpose of asserting their rights.

ART. 141. If the parties appear by virtue of the provisions of the foregoing article, they shall be considered as parties to the application. Should they not do so, the application shall be heard without their attendance in the same manner and with the same effect as if they had been present.

ART. 142. The ecclesiastical judges and courts may cite their respective prosecuting attorneys to appear as parties before the ordinary jurisdiction.

The said ecclesiastical judges or courts shall have the same character of parties when they appear at the hearing of the application to sustain their acts and competency.

ART. 143. If the ecclesiastical judge or court should not forward the records of the proceedings demanded of him, the provisions of article 136 shall be observed.

ART. 144. If the judge of first instance, in compliance with the provisions of article 136, should forward the record to the court, he shall order notice thereof to be given to the parties thereto, citing them to appear for the purposes prescribed in article 140.

ART. 145. After the records of the proceedings have been forwarded by the judge of first instance, in accordance with the provisions contained in the preceding articles, the application shall be considered as admitted by the mere fact that said record is before the court of competent jurisdiction.

ART. 146. In any case, after the records have been received by the audiencia the application shall be heard and determined in the manner prescribed in this law for appeals upon incidental issues.

ART. 147. The representative of the department of public prosecution shall also be a party to the applications not made by the same, and he must in all cases attend the hearing thereof.

ART. 148. The court shall render a decision within eight days following the hearing, limiting itself to the following declarations:

1. That the application is not well taken, taxing the costs against the person making it and ordering that the record be returned to the ecclesiastical judge or court for the continuation of the proceedings according to law. In no case can the costs be taxed against the department of public prosecution.

2. That the ecclesiastical judge or court has wrongfully assumed jurisdiction in the matter, and ordering the same to vacate any impositions or punishments he or it may have imposed. In such case the costs may be taxed against the ecclesiastical judge or court, if he or it should, with well-known temerity, have assumed powers and jurisdiction which said ecclesiastical judge or tribunal did not have.

This order shall be communicated in writing to the ecclesiastical judge or court.

ART. 149. A report of every decision declaring that an ecclesiastical judge or court has wrongfully assumed jurisdiction shall be made to the Government, a copy of said decision being also forwarded.

ART. 150. When it should be declared that an application is not well taken, the records of the proceedings shall be returned to the ecclesiastical judge or court, with the proper certificate, in order that he or it may proceed in the matter according to law.

ART. 151. After the return of the records of the proceedings, the costs shall be appraised and taxed. The audiencia shall issue the proper orders for their collection by judicial compulsion.

ART. 152. If it be declared that the ecclesiastical judge or court has wrongfully assumed jurisdiction, the records of the proceedings shall be forwarded to

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the judge of competent jurisdiction, and the parties who have appeared before the court shall be cited to appear before the competent judge, the ecclesiastical judge being given written notice thereof.

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ART. 1445. Should there be specially mortgaged or pledged property, the attachment shall be first levied thereupon.

Should there not be any such property, or if the property specially mortgaged or pledged should be clearly insufficient, the attachment shall be levied upon the property in the following order:

1. Money, if any should be found.
2. Public securities.
3. Jewelry of gold, silver, or precious stones.
4. Credits which may be at once realized upon.
5. Products and rents of all kinds.
6. Live stock.
7. Personal property.
8. Real property.
9. Salary or pensions.
10. Credits and rights which can not be at once realized upon.

ART. 1446. No attachment shall be levied upon railways open to the public service, nor upon their stations, warehouses, workshops, lands, structures, and buildings which may be necessary for the use thereof, nor upon the locomotives, cars, and other stationary or rolling stock used in the operation of the line.

When an execution is issued against a railroad company or enterprise it shall be enforced as prescribed in the law of November 12, 1869.

ART. 1447. Neither shall an attachment be levied upon the bed in daily use of the debtor, his wife, and children, nor upon their necessary clothing, nor upon the tools required in the art or trade in which said debtor may be engaged.

With the exception of the property mentioned, nothing shall be excepted.

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SECTION THIRD.—*Interventions.*

ART. 1530. Interventions must be based either upon the ownership of the property attached as belonging to the attachment debtor, or upon the right of the third person to recover his credit before the execution creditor is reimbursed.

ART. 1531. Interventions may be interposed at any stage of the executory action.

If the intervention should be based upon ownership, it shall not be admitted after the execution of the deed of sale or the consummation of the sale of the property involved, or its award in payment and delivery to the execution creditor, reserving the right of the third person to institute the action which he may deem proper against any person and in the manner which may be proper.

If the intervention should be based upon a preferred right, it shall not be admitted after payment has been made to the execution creditor.

ART. 1532. Complaints in intervention shall not suspend the course of the executory proceedings of which they are an issue.

They shall be heard and determined in a separate record in accordance with the proceedings prescribed for the declaratory action which may be proper in view of the amount involved, in accordance with the provisions of article 487.

ART. 1533. When the intervention is based upon ownership, as soon as a final order of sale is issued in an executory action, the proceedings for judicial compulsion shall be suspended with regard to the property involved in the intervention until a decision is rendered upon the latter.

ART. 1534. If the intervention should be based upon a preferred right, the proceedings for judicial compulsion shall be continued until the sale of the property attached takes place, and the proceeds therefrom shall be deposited in the establishment provided for the purpose, in order that payment may be made to the creditors in the order of preference stated in the judgment rendered upon the intervention.

ART. 1535. With the complaint in intervention must be presented the title on which it is based, without which requisite it shall not be acted upon.

ART. 1536. In no case shall a second intervention be allowed, whether based upon ownership or upon a preferred right, based upon titles or rights possessed by the intervenor at the time of interposing the first intervention.

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The opposition made for this reason to the admission of the complaint may be heard and decided according to the procedure established for dilatory exceptions, and if it should be sustained, the cost shall be taxed against the intervenor.

ART. 1537. The execution creditor and the execution debtor shall be parties to the intervention, and a delivery of copies of the complaint and other documents shall be equivalent to a summons for this action.

Both parties must answer the complaint within the proper period, to be counted from the date of the delivery of said copies, and should they not do so nor enter their appearance in the proceedings, the complaint shall be considered answered by the person in default, the proceedings being continued in default.

ART. 1538. The execution creditor who has been declared in default in the executory action shall also be considered in default in the intervention; but if his domicile were known, a copy of the complaint and of the documents attached thereto shall be served upon him.

ART. 1539. If the plaintiff and the defendant acquiesce in the intervention, the judge shall, without further proceedings, order the record to be brought before him, with a citation of the parties, and render judgment.

The same action shall be taken if both parties fail to answer to the complaint.

Said judgment may be appealed from for a review and for a stay of proceedings.

ART. 1540. If property not involved in an intervention based upon ownership is attached, the proceedings for judicial compulsion may be continued against the same, notwithsanding the intervention, and the proceeds shall be delivered to the execution creditor on account of his claim.

ART. 1541. The provisions contained in this section shall apply to interventions interposed in proceedings for the execution of judgments and in any other proceedings or incidental issue in which the attachment and sale of property takes place.

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TITLE XI.—ALIENATION OF THE PROPERTY OF MINORS AND INCAPACITATED PERSONS AND SETTLEMENT OF THEIR RIGHTS OUT OF COURT.

ART. 2010. Judicial permission shall be necessary in order to alienate or encumber the property of minors or incapacitated persons which pertains to the following classes:

1. Real property.
2. Public securities and commercial paper of all kinds, whether made payable to bearer or order.
3. Rights of all kinds.
4. Jewelry, personal property, and precious objects which may be preserved without deterioration.

ART. 2011. In order to decree a sale it shall be necessary—

1. That the father or the mother, in a proper case, of the child not emancipated should request it. If said child be over 12 or 14 years of age, respectively, according to sex, it shall also sign the petition.
2. That in the absence of a parent, the tutor of the minor, the curator of an incapacitated person, or the minor together with his curator request it.
3. That the reason for the alienation and the purpose to which the amount obtained is to be applied be stated.
4. That the necessity or utility of the alienation be proven.
5. That the *promotor fiscal* be heard in the matter.

ART. 2012. If the proof, referred to in number 4 of the foregoing article, is to be furnished by witnesses, there must be at least three, and the clerk shall identify them. Should he not be acquainted with them two witnesses for the purpose of identification shall be required.

The evidence shall be taken after the *promotor fiscal* has been cited to appear.

ART. 2013. After the evidence has been taken, and after the *promotor fiscal* has been heard, the judge without further proceedings shall render a decision, granting or denying the authority to make the sale.

This ruling may be appealed from for review and a stay of proceedings.

ART. 2014. The authority shall be granted in all cases under the condition that the sale must be made at public auction, after an appraisement, if property mentioned in numbers 1, 3, or 4 of article 2010 is involved.

Sales made by the father, or mother, in a proper case, exercising parental authority, are excepted from the foregoing rule. Such sales may be made

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without any other requisite than that of having first obtained judicial authority with a hearing of the *promotor fiscal* and of the persons mentioned in articles 219 and 213 of the mortgage laws respectively in force in the islands of Cuba and Porto Rico.

ART. 2015. The judge shall always appoint the experts for the appraisement, who can not be challenged. Neither can the third expert be challenged, if it should have become necessary to appoint one upon disagreement of the first two experts.

ART. 2016. After the appraisement has been made the judge shall order that the sale be announced for a period of thirty days, designating the day, hour, and place where it is to take place, and that edicts be posted in the customary places, inserting them also, should he deem it proper, in some official newspaper.

ART. 2017. No bid shall be received which does not amount to the sum at which the property was appraised.

ART. 2018. If no admissible bid has been received, the tutor or curator may make any of the following requests:

1. That he be permitted to withdraw from further proceedings in the matter and that the proceedings be discontinued.

2. That he be authorized to make the sale extrajudicially, for the price and under the conditions which served as the basis for the public sale.

3. That a second sale be announced, with a reduction of twenty per cent of the appraised value.

If he makes the second request, and if no extrajudicial sale can be made within one year from the time when the first public sale was attempted, he can request that another public sale be announced, subject to the aforementioned reduction.

ART. 2019. The second public sale shall take place with the same formalities as are prescribed for the first.

If in this sale there should be no admissible bid, the judge may authorize the tutor or curator to make an extrajudical sale for the price fixed for said second public sale.

ART. 2020. When the sale is requested for the payment of debts or other necessary purposes, a third public sale may be held, at the request of the tutor or curator, with a reduction of another twenty per cent from the time fixed for the second sale.

If no admissible bid is received at this sale, the representative of the minor may be authorized to sell the property extrajudically at the price fixed for the third public sale.

ART. 2021. The securities referred to in number two of article 2010 shall always be sold through a stockbroker or agent, whom the judge shall appoint, and at the current official quotations.

If not quoted on exchange they shall be sold according to the formalities prescribed in the foregoing articles for the sale of real property.

ART. 2022. After the sale is made the judge shall, under his liability, see that the amount received at said sale be applied as stated in the petition for authorization to make the sale.

ART. 2023. The amount received shall be delivered to the tutor or curator, pending its application, if he has been exempted from furnishing bond or if he has furnished bond sufficient to secure the same. Otherwise it shall be deposited in the public establishment in which judicial deposits are made.

ART. 2024. The authority to settle questions out of court relating to the rights of minors or incapacitated persons shall be requested by the same persons that request the sale of property.

The reason for and the purpose of the settlement must be stated in the written petition, as well as the doubts and difficulties of the business and the reasons that exist for believing it profitable and proper; the petition shall also be accompanied by a document in which the basis for the transaction shall be set forth.

All the documents and data necessary for the purpose of forming an exact judgment in the matter shall also be presented with the petition.

ART. 2025. If an action should be pending with reference to the right to be settled out of court, the documents shall be filed with the record thereof.

ART. 2026. If, in order to demonstrate the necessity of the settlement, the proof of some fact or the taking of certain steps should be necessary or proper, the judge shall order that it take place with the citation of the *promotor fiscal.*

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ART. 2027. After the provisions of the foregoing article have been observed, the record shall be delivered to the *promotor fiscal* in order that he may make such statements as he may deem proper.

ART. 2028. After the record has been returned by the *promotor fiscal* the judge shall make an order granting or denying authority for the settlement, as he may consider best for the interests of the minor or incapacitated person.

If it be granted he shall modify or approve the bases submitted, ordering that an authenticated statement of the proceedings, with the necessary enclosures, be delivered to the tutor or curator for the proper effects.

These orders may be appealed from for review and for a stay of proceedings.

ART. 2029. For the purpose of mortgaging or incumbering real property or for the extinction of property rights belonging to minors or incapacitated persons, the formalities shall be observed which are established for the sale of property, with the exception of those prescribed for public sales.

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TRANSLATION OF THE CODE OF COMMERCE IN FORCE IN CUBA, PORTO RICO, AND THE PHILIPPINE ISLANDS,

AMENDED BY THE LAW OF JUNE 10, 1897, INCLUDING THE COMMERCIAL REGISTRY REGULATIONS, EXCHANGE REGULATIONS, AND OTHER PROVISIONS OF A SIMILAR CHARACTER, WITH ANNOTATIONS AND APPENDICES.

WAR DEPARTMENT,
DIVISION OF CUSTOMS AND INSULAR AFFAIRS.
OCTOBER, 1899.

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DEPARTMENT OF GRACE AND JUSTICE.

LAW.

Don Alfonso XII, by the grace of God, constitutional King of Spain:

Know all ye who see and understand these presents, that the Cortes have decreed and we have sanctioned the following:

First and last article. The Secretary of Grace and Justice is hereby authorized to publish as a law the annexed project of a Code of Commerce.

Therefore,

We order all superior courts, justices, chiefs, governors, and other authorities, civil as well as military and ecclesiastical, of whatsoever class and dignity, to observe and enforce the observance, comply and execute the present law in all its parts.

Given at San Ildefonso on August 22, 1885.

I, THE KING.
FRANCISCO SILVELA,
Secretary of Grace and Justice.

ROYAL DECREE.

Taking into consideration the provisions of the law sanctioned by Me on this date, which authorizes the Government to publish as a law the form of a Code of Commerce, and in accordance with the opinion of the Council of Secretaries,

I decree the following:

ART. 1. The Code of Commerce referred to shall be observed as a law in the Peninsula and adjacent islands, from January 1, 1886.[a]

ART. 2. One copy of the official edition signed by me and countersigned by the Secretary of Grace and Justice shall be kept in the archives of the department and shall serve as the original for all legal purposes.

ART. 3. Commercial corporations in existence on December 31, 1885, which, according to article 159 of the said code, have the right of option between continuing to be governed by their regulations or statutes or to subjecting themselves to the provisions of the new code, must exercise this right by means of a resolution adopted by their members at a general extraordinary meeting, called especially for this purpose, in accordance with their present statutes, and being

[a] By a royal decree of January 28, 1886, this Code was extended to the islands of Cuba and Porto Rico and by another of August 6, 1888, to the Philippines.

Without prejudice to reproducing the text of the articles amended immediately after those of the Code for the Peninsula, which they substitute for said islands, we annex as appendices the text of the two royal decrees mentioned and their respective statements of reasons.

(That part of the text referring solely to the Philippines and Cuba has been omitted.)

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required to have this resolution published in the "*Gaceta de Madrid*" before January 1, 1886, and to present an authenticated copy thereof in the commercial registry. Corporations which do not make use of said right of option within the period mentioned shall continue to be governed by their own by-laws and regulations.[a]

ART. 4. The Government shall issue, after hearing the full council of state, before the day on which the new code becomes operative, the proper regulations for the organization and management of commercial registries and exchanges, and the transitory provisions required by the said new organizations.[b]

Given at San Ildefonso on August 22, 1885.

ALFONSO.

FRANCISCO SILVELA,
Secretary of Grace and Justice.

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[a] With regard to the contents of this article, the following explanatory royal order was issued under date of November 17, 1885:

"Some commercial corporations having applied to this department requesting an interpretation of the contents of article 3 of the royal decree of August 22 last, believing that it could be interpreted as a limitation of the right granted them by article 159 of the new code of commerce, to choose between governing themselves by their own statutes and regulations, or to subjecting themselves to the provisions of the code, His Majesty the King (whom God preserve) has deemed it proper to decide that article 3 of said royal decree, far from being a limitation of the right granted by article 159 of the code to the corporations to which it refers, must be construed as a privilege granted the same to make use of their right of option even before the new commercial legislation goes into operation, in order not to be deprived from the day on which it becomes operative of the benefits which may accrue to them, and that therefore there is no reason to consider the absolute right established by article 159 as limited, and further that they may exercise it when they consider it advisable until the new code of commerce goes into operation."

See the addition to article 159 of this code.

[b] The regulations for the organization and management of commercial registries were published on December 21, 1885, in the *Gaceta de Madrid* of the 28th of the same month and year, and were extended to the islands of Cuba and Porto Rico with some modifications by royal decree of January 12, 1886.

With regard to the laws for the exchanges, those in force at the present time are the regulations for commercial exchanges of the Peninsula of December 31, 1885, extended with slight changes to Cuba and Porto Rico by royal decree of April 16, 1886, by virtue of which they went into operation in said islands on March 1 of the same year.

As temporary provisions of those new organizations referred to in the article which we annotate we can cite with regard to the first royal decree of December 27, 1885, which is inserted as an addition to article 16 of this code, and that of May 11, 1886, regarding the record in commercial registries of the transfer of ownership of vessels; and among the complementary ones of the exchange laws the most interesting ones must be considered the special regulations of the Madrid Exchange, issued on June 18, 1886, and published in the "*Gacetas*" of June 26 and 27.

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CODE OF COMMERCE.[a]

Book First.—MERCHANTS AND COMMERCE IN GENERAL.

TITLE I.—MERCHANTS AND COMMERCIAL TRANSACTIONS.

ARTICLE 1. The following are merchants for the purposes of this code:

1. Those who, having legal capacity to trade, devote themselves thereto customarily.

2. Commercial or industrial associations which are formed in accordance with this code.

Articles 4 to 9 and 11 fix the persons who may trade; 13 and 14, those who can not trade; and 15, the conditions under which foreigners may do so.

According to the declarations made by the Supreme Court in several opinions, among others those of March 16, 1870, and December 12, 1889, the persons who by chance make some commercial transactions can not be considered merchants for the purposes of the prerogatives granted the latter by reason of their occupation, notwithstanding to their being subject, with relation to any disputes which may arise regarding these transactions, to the laws and jurisdiction of commerce.

With regard to the contents of No. 2 see article 122 of this Code.

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[a] This code has been in force in the Peninsula since January 1, 1886, and in Cuba and Porto Rico since May 1 of the same year. With regard to the Philippines, its text was published, with the modifications necessary for its adaptation to said islands, in the "*Gacetas*" of Manila of November 3 to 16 of 1888, from which latter date the fifteen days are to be computed, which, according to the royal decree of August 6, 1888, must pass from the date of its publication in said gazette in order that it may be considered in force in said archipelago.

Its provisions are therefore of general application in the entire Kingdom, the Spanish Antilles, and the Philippines, as stated in article 1 of the royal decrees which declare it in force in the respective territories. It was thus decided by the supreme court of justice with regard to the code of 1829, in its decisions of May 26, 1866, and April 2, 1862, according to which said code was promulgated for the entire Kingdom as a universal law with regard to commercial subjects and questions, with the high purpose of unifying the legislation in this respect and founded on the unalterable principles of justice; but it is not derogative, in our opinion, as stated in said decisions with regard to the repealed code, of all legislation in force with regard to commercial law to the date of its publication, because, aside from its not containing, like the former, a repealing clause, the present one not having the part which we might call that of mere procedure, the latter being included in a future reform of the law of procedure, we consider the code of 1829 in force in so far as its provisions do not conflict with those of the present one and those of the law of civil procedure in force at the present time. This occurs with reference to bankruptcies, as may be deduced from the explanation of reasons for book 4 of this code.

With regard to the transfer of a commercial credit, the provisions of the Roman law can not be considered as violated in order to authorize an appeal in cassation, even if the question be in Catalonia, but only those of the code of commerce and civil common law, which is supplemental to contracts of this class. (Opinion of October 5, 1894. *Gacetas* of December 13 and 14.)

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ART. 2. Commercial transactions, be they executed by merchants or not, whether they are specified in this Code or not, shall be governed by the provisions contained in the same; in the absence of which, by the commercial customs generally observed in each place; and in the absence of both, by those of the common law.

Commercial transactions shall be considered those embraced in this Code and any others of a similar character.[a]

The article we annotate does not give any definition of commercial transactions, nor does it state, like some foreign codes, the transactions which must be considered commercial, evading in the first case the difficulties and dangers presented by definitions in codes, and in the second the inconveniences of an enumeration which closes the door to combinations unkown at the present time, but which may easily arise from individual interest and human progress. The formula adopted to avoid these embarrassments does not, however, decide the question, the idea of a commercial transaction being thereby rendered even more indeterminate than if any attempt had been made to solve either of the questions expounded.

ART. 3. The legal presumption of a customary engagement in commerce exists from the time the person who desires to trade gives notice through circulars, newspapers, handbills, posters exhibited to the public, or in any other manner whatsoever, of an establishment, the purpose of which is to conduct any commercial transaction.

According to a declaration of the supreme court, in an opinion rendered on June 7, 1871, notwithstanding that commercial transactions are customarily executed on another person's account, the persons transacting them must be looked upon as merchants.

In another opinion, dated January 20, 1872, it is stated that a customary engagement in commerce undoubtedly exists from an uninterrupted series of commercial transactions; but the same intention may be manifested by one transaction only, either expressly through advertisements or circulars, or impliedly by throwing open to the public a warehouse or shop; and in another, of June 14, 1883, that the person who customarily and ordinarily devotes himself to purchasing grain for conversion into flour, the latter being sold, must be considered a merchant, notwithstanding that he is not recorded in the registry and that he has not advertised his business to the public through newspapers, handbills, or permanent posters, which only constitute a case in which a customary engagement in commerce is presumed for legal purposes.

ART. 4. The persons having the following conditions shall have legal capacity to customarily engage in commerce:

1. Those who have reached the age of twenty-one years.
2. Those who are not subject to the authority of a father or mother nor to marital authority.
3. Those who have the free disposition of their property.

This article refers to Spaniards only. With regard to foreigners see article 15.

According to article 278 of the civil code, minority continues until the twenty-third year; therefore, in our opinion, to secure uniformity in legislation, the limit for legal capacity to trade should also be fixed at that age, for the simple reason that the former age being fixed, as a rule, in foreign laws, which are the ones fixing the limit at twenty-one years, which might as well have been fixed at twenty as at twenty-two or twenty-three years.

Article 154 of the civil code provides that the father, or in his absence the mother, has authority over their legitimate children who are not emancipated.

Acknowledged illegitimate children and adopted minors are under the authority of the father or mother who acknowledges or adopts them.

According to article 167 of said code, parental authority ceases (1) by the death of the parent or of the child; (2) by emancipation; (3) by adoption of the child.

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[a] See the doctrine of the opinions of November 24 and April 10, 1894, at the end of article 532.

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Articles 168 and 171 of said code fix the cases in which the father and, in a proper case, the mother loses the parental authority over their children.

With regard to the marital authority, it is known that it is created by reason of marriage, during which time the personality of the woman disappears, the husband having her legal representation, as prescribed by article 60 of the civil code. This article and the following enumerate the acts which the woman can not perform. Article 62 treats of transactions executed in violation of the prescriptions of said articles, and article 63 the ones she may perform without permission from her husband.

See articles 6 to 12 of this code.

ART. 5. Persons under twenty-one years of age and incapacitated persons may continue, through their guardians, the commerce which their parents or persons from whom the right is derived may have been engaged in. If the guardians do not have legal capacity to trade, or have some incompatibility, they shall be under the obligation to appoint one or more factors who possess the legal qualifications, and who shall take their places in the trade.

As Mr. Alonso Martinez says in his statement of reasons, the previous proper declaration of the profits the minor or incapacitated person may derive by reason of continuing said commerce must be made, which shall be issued by the judicial authority, after the proceedings mentioned in the law of civil procedure.

According to No. 4 of article 269 of the civil code, the guardian requires authority of the family council "to continue the commerce or industry in which the person incapacitated or his ascendants, or those of the minor, had been engaged."

ART. 6. A married woman, over twenty-one years of age, may trade with the authority of her husband, contained in a public instrument recorded in the commercial registry.

ART. 7. A married woman shall also be considered authorized to trade, who does so with the knowledge of her husband.

Unless it appears to the contrary in a public instrument in the commercial registry, it shall be presumed that she trades with the consent of her husband.

ART. 8. The husband may freely revoke the permission expressly or impliedly granted the wife to trade, stating the revocation in a public instrument, which shall also be recorded in the commercial registry, besides being published in the official newspaper of the town, should there be any, or otherwise in that of the province, and announcing it to her correspondents by means of circulars.

This revocation can in no case prejudice rights acquired before its publication in the official newspaper.

For the purpose of evading doubts in the articles modified, in extending the code to Cuba, Porto Rico, and the Philippines, they will, like the present one, bear the proper indication. The lack thereof will signify that the text of the article was not modified and that, therefore, it is the same for the Peninsula, Cuba, Porto Rico, and the Philippines.

ART. 9. A woman who at the time of contracting marriage is engaged in commerce shall require the permission of her husband to continue to trade.

This permission shall be considered as granted as long as the husband does not make known, in the manner prescribed in the foregoing article, the discontinuance of his wife in trade.

ART. 10. If the woman trades in the cases mentioned in articles 6, 7, and 9 of this code her dowry and personal property in addition to the dowry, and all the property and rights that both spouses may

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possess in common or by reason of the conjugal partnership, shall be liable for the results of her commercial transactions, the wife being permitted to alienate and mortgage her personal private property as well as that owned in common.

The personal property of the husband may also be alienated or mortgaged by the wife, if the authority granted by the former was or is extended to the same.

ART. 11. A married woman who is over twenty-one years of age, included in any of the following cases, may also trade:

1. Who lives away from her husband on account of a final decree of divorce.

2. Whose husband is subject to guardianship.

3. Whose husband is absent, his residence unknown, and his return not expected.

4. Whose husband is serving a sentence of civil interdiction.

With regard to declarations of absence, article 181 of the civil code states that if two years have elapsed without any news from the absentee, or from the time the last were received, and five years if the absentee has left any person in charge of the administration of his property, the absence may be declared.

According to the penal code of 1870 the punishment of interdiction includes, during the time of serving it, the privation of the right of parental authority, marital authority, administration of his property, and to dispose of the same by means of an act *inter vivos*.

According to article 229 of the civil code, the wife of a criminal who is serving a sentence of civil interdiction, exercises the parental authority over the children in common during the duration of the interdiction, if she is of age, but if she is a minor she shall act under the direction of her father, and, in a proper case, of her mother, and in the absence of both, of her guardian.

ART. 12. In the cases referred to in the preceding article, only the private property of the wife and that owned in common or of the conjugal partnership which has been acquired by virtue of trade, shall be liable for the results thereof, the wife being permitted to convey or mortgage either.

After the absence of the husband has been legally declared, the wife shall moreover have the rights granted her in such case by the common law.

The provision in force at the present time is article 188 of the civil code, which prescribes that the wife of an absentee, of age, may freely dispose of the property of any class whatsoever which may belong to her; but she can not alienate, exchange, nor mortgage the private property of the husband, nor that of the conjugal partnership, except by virtue of judicial authority.

ART. 13. The following can not trade nor exercise any direct administrative or economic representation in commercial or industrial associations:

1. Persons sentenced to civil interdiction, until they have served their sentence or have been amnestied or pardoned.

2. Persons who have been declared bankrupts, until they have obtained their discharge, or have been authorized, by virtue of an agreement accepted at a general meeting of creditors and approved by the judicial authority, to continue at the head of their establishment, the discharge being considered in such cases as limited to the contents of the agreement.

3. Those who on account of laws or special provisions can not trade.

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These prohibitions are a development or interpretation of the provisions contained in the third condition of article 4, the first being in harmony with the provisions of article 43 of the penal code for the Peninsula, article 41 of that for Cuba and Porto Rico, and 42 of that for the Philippines.

With regard to No. 2, see articles 870 et seq. of this code, and in relation to No. 3, article 14 of the same, and articles 28 and 29 of the notarial regulations.

We do not understand why other incapacitated persons have not been included in this article, such as prodigals, etc., to whom its provisions should be applied by reason of analogy, because between the prodigal and the person subject to civil interdiction there exist no notable differences for the purposes of the article we annotate.

ART. 14. The following can not engage in the commercial profession, neither in person nor by proxy, nor can they hold any direct administrative or economic position in commercial or industrial associations within the bounds of their districts, provinces, or towns in which they discharge their duties:

1. Associate justices, judges, and officials of the department of public prosecution (*ministerio fiscal*) in active service.

This provision shall not be applicable to mayors (*alcaldes*), municipal judges, and municipal prosecuting attorneys, nor to those who by chance are discharging judicial or prosecuting functions.

2. Administrative, economic, or military chiefs of districts, provinces, or garrisons.

3. Employees in the collection and administration of public funds of the State appointed by the Government.

Persons who administer and collect temporarily or their representatives are excepted.

4. Money and commercial brokers of any class whatsoever.

5. Those who by virtue of laws or special provisions can not trade in certain territory.

With regard to this article, which, in so far as it refers to the officials of the judiciary, is of the same tenor as article 119 of the organic law, it is advisable to remember that according to a decision of the chamber of administration of the supreme court and the full council of state the office of receiver of a bankrupt company is included in the incompatibility.

ART. 15. Foreigners and associations established abroad may trade in Spain, subject to the laws of their country, in so far as their capacity to transact business is concerned; and to the provisions of this code in all that refers to the creation of their establishments within the Spanish territory, to their commercial operations, and to the jurisdiction of the courts of the country.

The provisions contained in this article shall be construed without prejudice to what may, in particular cases, be established by treaties and conventions with other powers.

The provisions of this article are in harmony with article 2 of the present constitution, which permits foreigners to freely establish themselves in Spanish territory and engage in industry or dedicate themselves to any occupation for the discharge of which no certificates of proficiency issued by Spanish authorities are required.

The treaties of commerce and navigation more recently celebrated with the nations which have the largest commercial relations with Spain, and which are actually in force, are the following: The one made with Portugal, signed at Madrid on March 27, 1893, and ratified on July 17 of the same year, the provisions of which are applicable on the part of Spain to its territory of the Peninsula, the Balearic and Canary islands, and on the part of Portugal to its territory of the Peninsula and to the Madeira and Azores archipelagoes, from the date of the exchange of the ratifications and which is to continue in force for

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ten years from said date; the conventions celebrated with Sweden and Norway, signed at Aranjuez on June 27, 1892 (*Gaceta* of November 1, 1893), ratified and duly exchanged at Madrid on August 9, 1893, which went into operation on January 1, 1894, and the royal orders for its application of December 26, 1893 (*Gaceta* of the 31st), and the amendment to the additional protocol of that of Norway with regard to article 16 of the convention executed at Stockholm on October 7, 1895; the declaration relating to commerce between Spain and the Netherlands, signed at Madrid on July 12, 1892 (*Gaceta* of December 14, 1893), and the royal decree explanatory of the same of December 26, 1893 (*Gaceta* of the 31st); the convention celebrated between Spain and Switzerland on July 13, 1892 (*Gaceta* of November 15, 1893), which went into operation on January 1, 1894, with the rules issued for its application by royal order of December 26, 1893; the one agreed upon with Colombia, signed at Bogotá on June 23, 1892, the ratifications of which were exchanged on June 23, 1893; the one celebrated with Denmark on July 4, 1893, ratified and the ratifications exchanged on August 10, 1894, and the royal order of June 10, 1895, containing rules for its fulfillment.

With regard to the other nations, according to the provisions of the royal decree of December 31, 1893 (*Gaceta* of January 1, 1894), and its explanatory royal order of the same date, there shall be applied from January 1, 1894, to products of the soil and industry of Germany, Austria-Hungary, Denmark, France (including Algiers), Great Britain and her colonies, and Italy, the lowest customs duties and the tariff advantages granted Switzerland, Sweden and Norway, and the Netherlands and her colonies by the treaties mentioned in the foregoing paragraph, until the commercial agreements recently concluded with Spain, and which are awaiting the approval of the Cortes are definitely approved.

Similar treatemnt shall be accorded the products of the Argentine Republic, Bolivia, Costa Rica, Chile, Guatemala, the Hawaiian Islands, Morocco, Mexico, Nicaragua, Paraguay, Persia, Peru, Salvador, Uruguay, and Venezuela, which by virtue of old conventions enjoy the privileges granted the most favored nations.

Annam, Belgium, China, Colombia, Ecuador, Japan, Russia (including Finland), and Siam shall continue from January 1, 1894, to enjoy the advantages of the second customs tariff, the first tariff being applied to the other countries not mentioned. (Royal order of December 31, 1893. *Gaceta* of January 1, 1894.)

We should, moreover, take into consideration, on account of its great interest to commerce in general, the agreement in force relating to the international registry of trade or commercial marks made between Spain, Belgium, France, Guatemala, Italy, the Netherlands, Portugal, Switzerland, and Tunis, signed at Madrid on April 14, 1891; the one made, also at Madrid and on the same date as the foregoing one, between Spain, Brazil, France, Great Britain, Guatemala, Portugal, Switzerland, and Tunis, for the purpose of suppressing false certificates of origin of merchandise; the international convention of union for the protection of industrial property of March 20, 1883, celebrated between Spain, Belgium, Brazil, the United States, France, Great Britain, Guatemala, Italy, Norway, the Netherlands, Portugal, Sweden, Switzerland, and Tunis, and the protocol relating to the support of the international office for said union, signed on April 15, 1891, and ratified on June 15, 1892; the declaration between Spain and Great Britain for the purpose of regulating the situation of corporations and other industrial, commercial, and financial associations, published on February 2, 1883, and the convention with the United States relating to the suspension and differential tonnage duties or taxes, signed at Madrid on December 21, 1887.

TITLE II.—COMMERCIAL REGISTRIES.

ART. 16. A commercial registry shall be opened in all the capitals of provinces, composed of two independent books, in which there shall be recorded:

1. Private merchants.
2. Associations.

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In the coast provinces, and in those of the interior where it is considered advisable on account of the existence of a navigation service, the registry shall contain a third book in which to record vessels.

The regulations for the organization and management of commercial registries in force at the present time are those of December 21, 1885, extended to the islands of Cuba and Porto Rico by the royal decree of January 12, 1886.

Articles 28 to 56 of said regulations, as well as article 3 of the temporary provisions of the same, are in harmony with the contents of this article.

Furthermore, for the compliance with the prescriptions of the last paragraph, a royal order was issued on December 27, 1885, the body of which is as follows:

"1. A book for the purpose of recording vessels shall be opeend in the commercial registries of Barcelona, Tarragona, Valencia, Alicante, Almería, Málaga, Cádiz, Huelva, Coruña, Santander, Bilbao, San Sebastián, Palma de Mallorca, and Santa Cruz de Tenerife, which at the same time are capitals of provinces and seaports, besides the one to be opened in the commercial registry of Seville, according to the said regulations.

"2. The book of registry of vessels shall also be established at Gijón, Rivadeo, Vigo, Motril, Cartagena, and Palamós, capitals of maritime provinces, corresponding to the civil ones of Oviedo, Lugo, Pontevedra, Granada, Murcia, and Gerona.

"3. By virtue of the provisions contained in article 2 of the regulations, the registers of property of the said towns shall temporarily keep these books, with the exception of the one to be established at Palamós, which shall be in charge of the prosecuting attorney of the municipal court.

"4. Until the books referred to in articles 6 and 13 of the said regulations are furnished, the entries shall be made in provisional pamphlets, and the receipts shall be issued in the usual form."

Since May 1, 1886, there has been established in each one of the six provinces of the island of Cuba and in the capital and in the city of Ponce, of the island of Porto Rico, the commercial registry, composed of the two books referring to merchants and associations.

The registry of vessels was established on the same date in Havana for the same province and that of Pinar del Rio; in Matanzas and Santiago de Cuba for the respective provinces; in Cienfuegos for that of Santa Clara; in Nuevitas for that of Puerto Príncipe, and also in San Juan Bautista de Puerto Rico, and in Ponce for that island.

The commercial registry of the capital of Porto Rico includes the territories of the two inferior courts of the same capital and those of Arecibo, Humacao, Caguas, and Aguadilla; the one established at Ponce embraces the territories of the inferior courts of Ponce, Mayagüez, San Germán, and Guayama.

ART. 17. The record in the commercial registry shall be optional for private merchants and compulsory for associations established in accordance with this code or with special laws, and for vessels.

In the old code (according to article 25) the record in the general registry was obligatory for merchants and commercial associations, vessels not being mentioned. At the present time compliance with this formality is optional in the first case, and obligatory in the last two.

ART. 18. A merchant who is not registered can not request the record of any document in the commercial registry nor take advantage of its legal effects.

See articles 26, 27, and 29 of this code.

ART. 19. Registers shall keep the book necessary for record, stamped and folioed and with a memorandum on the first folio, signed by the municipal judge, stating the number of folios each book contains.

Where there are several municipal judges, any one of them may sign the memorandum.

In the same article modified for the Philippine Islands the word *municipal* is substituted by *of the peace*, a change which is justified, the municipal régime being almost unknown there up to the present time.

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With reference to the fees to be charged by municipal judges for keeping the commercial registry, the royal order of December 29, 1885, prescribed that the regulations for the organization and management of the same of December 21 of said year be observed.

With regard to the manner of keeping the registry, see articles 5 to 19 of the regulations mentioned.

ART. 20. The register shall enter in chronological order in the registry and general index all the merchants and associations which have themselves recorded, giving each sheet the proper correlative number.

ART. 21. On the sheet of the record of each merchant or association there shall be entered:

1. Name, firm name, or title.
2. The kind of commerce or transactions engaged in.
3. The date on which business is to begin or was begun.
4. The domicile, with a statement of the branches which may have been established, without prejudice to recording the branches in the registry of the province in which they are domiciliated.
5. The articles constituting a commercial association, whatever may be its object or appellation, as well as instruments modifying, rescinding, or dissolving the said associations.
6. General powers of attorney and revocation of the same, should there be any, given to managing partners, factors, employees, and any other agents.[a]
7. The authorization of the husband for his wife to trade, and the legal or judicial authority of the wife to administer her property on account of the absence or incapacity of the husband.
8. The revocation of the permission granted the wife to trade.
9. Dowry instruments, marriage agreements, and the deeds which prove the ownership of the personal property in addition to the dowry of the wives of merchants.
10. The issue of shares, certificates, and obligations of railroads and of all kinds of associations, be they of public works, credit, or others, stating the series and number of the certificates of each issue, their interest, revenue, amortization, and premium, should they have either, the total amount of the issue, and the property, works, rights, or mortgages, should there be any, which are liable for their payment.

There shall also be recorded, in accordance with the provisions of the foregoing paragraph, the issues made by private parties.

11. The issues of bank notes, stating the date, class, series, quantity, and value of each issue.
12. The certificates of industrial property, patents, and trademarks, in the form and manner established by law.

Foreign associations which desire to establish themselves or create branches in Spain shall present and have recorded in the registry, besides their statutes and the documents prescribed for the Spanish ones, the certificate issued by the Spanish consul stating that said companies have been established and authorized according to the laws of the respective country.[b]

To record the issues which private merchants may make according to the provisions of the article we annotate, as well as their partial or total cancellation, and the certificates mentioned in number 12, the provisions of articles 40 to 45

[a] See in the addition to article 279 the doctrine of the opinion of February 13, 1895.

[b] See in the proper appendix the modification to this article suggested in the project published in the *Gaceta* of April 27, 1892.

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of the commercial registry regulations shall be observed. (Article 32 of the same.)

The supreme court decided in an opinion of May 8, 1885, that the decision which gives value and legal force to copartnership agreements before being recorded violates articles 22, 25, 285, and 288. (Referring to the code repealed.)

With regard to the provisions of number 9, see article 180, first paragraph, of the mortgage law for the Peninsula and 179 of that for the colonies.

See also articles 27 and 28 of this code.

In so far as the prescriptions of number 10 are concerned, see the last paragraph of article 153 of the mortgage law for the Peninsula and the only paragraph of the same article of the mortgage law for the colonies.

The legislation in force on patents and trade-marks, cited in number 12, is composed of the law of July 30, 1878, the royal decree of November 20, 1850, on marks and seals on industrial property, the royal decree of August 21, 1884, regarding trade-marks in the colonies, and the agreements relating to the international registry of trade or commercial marks of April 14, 1891, cited in the note to article 15 of this code.

With regard to the provisions of this article, see also the third appendix at the end of this code.

ART. 22. In the registry of vessels there shall be stated:

1. The name of the vessel, kind of equipment, system or power of the engines, if it is a steamer, stating whether they are nominal or indicated horsepower; place of construction of the hull and engines; year thereof; material of the hull, stating whether it is of wood, iron, steel, or mixed; principal dimensions of length, breadth of beam, and depth of hold; distinctive signal which it bears in the International Code of Signals; finally, the names and domiciles of the owners or part owners of the same.

2. The changes in the ownership of vessels, in their name, or in any of the other conditions enumerated in the foregoing paragraph.

3. The imposition, modification, or cancellation of liens of any class whatsoever which encumber vessels.

See the regulations for the commercial registry (articles 45 to 56) and those for the merchant marine.

Article 15 of the law in force regarding marine mortgages of August 21, 1893, prescribes that the first record of each vessel shall be that of the ownership thereof, and shall state the circumstances enumerated in the article we annotate. The absence of said record shall be sufficient cause to refuse any other entry until this absence is remedied at the instance of the person having a legitimate interest therein.

The record of the ownership of a vessel shall be made in the commercial registry by presenting a certified copy of its register or entry, issued by the naval commander of the province where it is registered.

When the vessel is registered to navigate in a point belonging to a registry other than that of its construction, registers shall require a proper certificate of the registry of the place where said vessel was constructed. The same shall be done in cases of transfer of registers or entry of a vessel when the latter has already been registered or authorized to navigate.

ART. 23. The record shall be made, as a general rule, by virtue of notarial copies of the instrument presented by the person interested.

The record of notes, obligations, or instruments payable to order and to bearer, which do not include mortgages of real estate, shall be done by virtue of the certificate of the instrument in which there appears the agreement of the person or persons who make the issue and the conditions, requisites, and guaranties of the same.

When these guaranties consist of the mortgage of real estate, the proper instrument shall be presented for entry in the commercial registry, after having been recorded in the registry of property.

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ART. 24. Articles constituting associations not recorded shall be binding between the members who execute the same; but they shall not prejudice third persons, who, however, may make use thereof in so far as advantageous.

This applies the principle of the mortgage law, by virtue of which, although contracts which are not recorded in the registry of property, have no effect against third persons, they are binding between the parties thereto.

With regard to the contents of the similar article of the code, which has been repealed (article 28), the supreme court declared in an opinion of February 14, 1870, that the absence of public articles of association, as well as their not being entered in the general commercial registry, can not prejudice third interested persons who may have made contracts with the same after its readiness to transact business has been made public in the customary manner; and in another one, of July 3, 1876, that the omission of the record of articles of association can only affect the members among themselves.

ART. 25. There shall also be entered in the registry all resolutions or acts which produce an increase or decrease in the capital of commercial associations, no matter what may be their denomination, and those which modify or alter the conditions of the recorded instruments.

The omission of this requisite shall produce the effects mentioned in the foregoing article.

(See the note to article 175 of this code.)

ART. 26. The instruments recorded can only produce a legal effect to the detriment of a third person from the date of their record, not being invalidated by any previous or subsequent ones which are not recorded.

ART. 27. Dowry instruments and those referring to personal property in addition to the dowry of the wife of a merchant, not recorded in the commercial registry, shall have no right of preference over other credits.

Real estate and property rights recorded in the registry in favor of the wife prior to the origin of the concurrent credits are excepted.

ART. 28. If a merchant should omit to enter in the registry the dowry property or personal property in addition to the dowry of his wife, the latter may do so, or it may be done in her name by her parents, brothers, or uncles by consanguinity, as well as by those who are or have been the guardian or curator of the said wife, or who constitute or have constituted the dowry.

ART. 29. Powers of attorney which are not recorded shall be effective between the principal and the attorney; but they can not be made use of to the prejudice of a third person, who, however, may base his claim on the same in so far as may be favorable to him.[a]

ART. 30. The commercial registry shall be public. The register shall give to whomsoever requests it any data with reference to what appears in the record sheet of each merchant, association, or vessel. He shall also issue true copies of the entire or of a part of the sheet mentioned to any person who requests it in writing.

See articles 57 to 62 of the regulations for commercial registries.

ART. 31. The commercial register shall have under his charge, where there is an exchange, copies of the daily quotations of the properties negotiated and the exchanges fixed therein.

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[a] See in the addition to article 279 the doctrine of the opinion of February 13, 1895.

See G. O. No. 190, Hdqrs. Dept. P. R., Nov. 27, 1899.

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The copies shall serve as original instruments in all cases of investigation and verification of exchanges and quotations on determined dates.

See article 80 of this code and article 50 of the regulations for commercial exchanges.

ART. 32. The office of commercial register shall be filled by the government after a competitive examination.

TITLE III.—BOOKS AND BOOKKEEPING OF COMMERCE.

ART. 33. Merchants shall be required to keep—

1. A book of inventories and balances.
2. A daybook.
3. A ledger.
4. A copying book for letters and telegrams.
5. The other books required by special laws.

Copartnerships and companies shall also keep a book or books of minutes, in which there shall be entered all the resolutions which refer to the social progression and transactions adopted at general meetings and at those of boards of directors.

The name of inventory and balance book is given to the book in which a merchant is required to record the money and other property, rights, shares, and debts which he had when he began his business and the balance which he must strike at the end of each year. He shall draft the same in accordance with the provisions of article 37 of this code.

No stamp taxes are paid when said books are presented to the courts in accordance with article 36.

In the daybook there shall be entered the transactions which have taken place each day in the manner prescribed by article 38.

An establishment which has branches in the same town of its residence shall not be required to keep a daybook in each one of them; but when the branches are situated in a town other than the one in which the principal office is located they must keep one, it being impossible otherwise to comply with the obligations prescribed by the code of commerce to make a statement at the proper time of the obligations contracted by the branches with the head commercial office or company interested. (R. O. of December 25, 1889. *Gaceta* of April 20, 1890.)

A ledger is called the book in which merchants keep an open account with the persons with whom they transact business, and with the article or branch in which they speculate.

The entries are made according to strict order of dates, placing on one page the credits of each account and on the opposite one the debits, this book having with this object in view the same folio on both sides.

In the copying book of letters and telegrams there is copied all the commercial correspondence, not omitting any detail, no matter how insignificant it may appear, correcting any mistakes which may occur in copying letters, immediately after the same.

See articles 41 and 42 of this code.

The inventory and balance books, the daybook, and ledger are subject to the stamp tax, and pay at the rate of 5 pesetas for the first folio and fifteen céntimos for each succeeding one; the copying books for letters and telegrams of banks, commercial associations, industrial enterprises, marine and life insurance companies, and also those of foreign or national merchants who keep their books according to the provisions of this code, shall pay at the rate of two and one-half céntimos per folio, without the previous payment of which they can not be authorized by the municipal court of the proper district under the personal liability of the official charged with said duty if he does not have stamps. The payment shall be made in the paper money of the State and shall have the proper memorandum, subscribed by the municipal judge who is to authorize and rubricate said books. All the books enumerated shall be used for several consecutive years; but if for any reason whatsoever the industry engaged in which required the keeping of such books is interrupted or suspended, they must also be renewed when the business is resumed.

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ART. 34. Any other books which may be considered advisable, according to the system of bookkeeping adopted, may also be kept.

Such books shall not be subject to the provisions of article 36; but any which may be considered proper may be legalized.

ART. 35. Merchants may keep their books in person or have them kept by a person whom they authorize for the purpose.

If the merchant does not personally conduct his books, it shall be presumed that authority has been granted the person who does keep them, unless there is proof to the contrary.

ART. 36. Merchants shall present the books referred to in article 33 bound, ruled, and folioed, to the municipal judge of the district where they have their commercial establishment, in order that he may make on the first folio of each one a signed memorandum of the number contained in the book.

The seal of the municipal court which authenticates them shall, moreover, be stamped on all the sheets of each book.

According to the provisions of the royal order of December 29, 1885, the legalization of commercial books, considering the small amount of work involved, shall be done by the municipal judges without charging any fees therefor.

On the two occasions where *municipal* is used in the article we annotate this word in the same article modified for the Philippines is substituted by *of the peace.*

ART. 37. The book of inventories and balances shall begin with the inventory which must be made by the merchant at the time of commencing business, and shall contain:

1. A minute statement of the money, securities, credits, notes payable, real or personal property, merchandise, and goods of all kinds appraised at their true value, and which constitute his assets.

2. A true statement of the debts and all kinds of pending obligations, should there be any, and which form his liabilities.

3. He shall fix, if proper, the exact difference between his assets and liabilities, which will be the capital with which to begin business.

Merchants shall, moreover, make annually and enter in the same book the general balances of their transactions, with the details mentioned in this article, and in accordance with the entries in the daybook, without any reservation or omission whatsoever, over their signature and under their liability.

ART. 38. The first entry in the daybook shall consist of the result of the inventory treated of in the foregoing article, divided into one or several consecutive accounts, according to the system of bookkeeping adopted.

There shall thereafter follow, day by day, all their transactions, each entry stating the credit and debit of the respective accounts.

When the transactions are numerous, no matter of what importance they may be, or when they took place outside of the domicile, those referring to each account which have taken place on one day may be included in the same entry, but observing in the statement of the same, when they are detailed, the same order in which they occurred.

There shall be entered in the same manner, on the date on which they are taken from deposit, the amounts which the merchant uses for his domestic expenses, which shall be placed in a special account to be opened in the ledger for this purpose.

See No. 1 of article 888 of this code.

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ART. 39. The accounts referring to each object or person in particular shall, moreover, be opened with a credit and debit in the ledger, and the entries referring to these accounts in the daybook shall be transferred to the former in strict order of dates.

ART. 40. In the book of minutes which shall be kept by each association there shall be entered *verbatim* all resolutions adopted at their meetings or at those of their managers, stating the date of each one, the persons who were present at the same, the votes cast, and anything else which will aid in arriving at an exact knowledge of what was decided, being authenticated with the signatures of the managers, directors, or administrators who are in charge of the management of the association or by the persons fixed in the by-laws or the regulations which govern the latter.

ART. 41. All letters which a merchant may write regarding his business and the telegrams he may send shall be transferred to the copying book, either by hand or through any mechanical means, completely and consecutively, by order of dates, including the subscribing clause and signature.

ART. 42. Merchants shall carefully keep in bundles and in proper order the letters and telegraphic messages relating to their transactions which they may receive.

See article 49, which completes the prescriptions of the one we annotate.

ART. 43. Merchants, besides complying with and fulfilling the conditions and formalities prescribed in this title, must keep their books in a clear manner in order of dates, without intervals, interlineations, erasures, or blots, and without showing traces of having been altered by substituting or tearing out folios, or in any other manner whatsoever.

The supreme court, in an opinion of November 22, 1869, established that entries made in books have no value whatsoever in suits *in favor of the merchant* who presents them, when they appear to contain erasures or corrections in their important part.

ART. 44. Merchants shall correct the errors or omissions which may occur in making entries in the books immediately thereafter, as soon as they notice them, clearly explaining in what they consisted and writing the phrase as it should have appeared.

Should some time have elapsed since the error was committed or since the occurrence of the omission, they shall make the proper entry of correction, adding at the margin of the incorrect entry a memorandum calling attention to the correction.

ART. 45. No official inquiry can be instituted by judges or courts, nor any authority, in order to ascertain if merchants keep their books in accordance with the provisions of this code, nor any general investigation or examination of the bookkeeping in the offices or countinghouses of merchants.

Although articles 45 and 46 of the code of commerce establish, as a general rule, that neither officially by a judge or superior court nor any authority whatsoever can an inquiry be instituted to ascertain if merchants keep their books in accordance with the prescriptions of this code, nor that any investigation or general examinaion of the bookkeeping in the offices or countinghouses of the same can be made, nor that there can be decreed, at the instance of a party, the communication, delivery, or general inspection of the books, article 47 of this code is an exception to this rule, as it establishes that the exhibition of the books and documents of merchants may be decreed at the instance of a person, or officially, when the person to whom they belong has any interest or liability

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in the matter in which the exhibition is desired, a legal precept which is in harmony with article 605 of the law of civil procedure, in accord with article 51 and 52 of the old code of commerce, which corresponds to the said article 47 of the code in force, and which can not be considered as violated in this case. (Opinion of March 30, 1894. *Gaceta* of September 18.)

ART. 46. Neither can the general communication, delivery, or inspection of the books, correspondence, and other documents of merchants be decreed at the instance of a party, except in cases of liquidation, universal heirship, or bankruptcy.[a]

ART. 47. With the exception of the cases mentioned in the foregoing article, the exhibition of the books and documents of merchants can only be decreed, at the instance of a party, or officially, when the person requesting it has any interest or liability in the question in which the exhibition is to take place.

The inspection shall be made in the countinghouse of the merchant, in his presence, or in that of the person he may delegate, and shall be limited exclusively to the points which relate to the matter in question, said points being the only ones which may be verified.

This article is in harmony with article 605 of the law of civil procedure for the Peninsula, 604 of that for Cuba and Porto Rico, and 588 of that for the Philippines.

The exhibition as evidence, which is established by the article re annotate, makes the refusal of a merchant to exhibit his books ordered by a judicial mandate an act of contempt of court, and this code not containing any penalty for such cases of contempt, there must be applied thereto the punishment prescribed by the penal code for said offense. (Opinion of the supreme court of February 6, 1880. *Gaceta* of May 8.)

A commercial association not being found in any of the cases specified in the article we explain, the opinion which exempts the same from a suit instituted in order that it be required to exhibit its books is correctly applied by this article and does not violate article 603 of the law of civil procedure of the Peninsula (602 of that for Cuba and Porto Rico, and 586 of that for the Philippines) because, although it establishes that persons who litigate shall not be required to exhibit private documents of their exclusive property, with the exception of the right of the person who requires them, of which he may make use in the proper suit, said article does not exempt from the unavoidable obligation to justify the right with which the exhibition is demanded, and should no right exist, it can not be demanded. (Opinion of September 26, 1893. *Gaceta* of December 3.)

ART. 48. In order to graduate the weight of evidence of books of merchants, the following rules shall be observed:

1. Books of merchants shall be evidence against themselves, no proof to the contrary being admitted; but the opponent can not accept the entries which are favorable to him and reject those which prejudice him; but, having admitted this means of evidence, he shall be subject to the results which they may conjointly entail, taking into equal consideration all the entries relating to the matter in litigation.

2. If the entries of the books exhibited by two merchants should not conform, and those of one of them have been kept with all the formalities mentioned in this title, and those of the other contain any defects or lack the requisites prescribed by this code, the entries of the books correctly kept shall be admitted against those of the defective ones, unless the contrary is demonstrated by means of other proofs legally admissible.

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[a] See in the respective appendix the modification suggested for this article in the project of law published in the *Gaceta* of April 27, 1892.

See the addition to the preceding article.

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3. If one of the merchants should not present his books or should state that he does not possess any, those of his adversary, kept with all the legal formalities, shall be evidence against him, unless it is proven that the lack of said books is caused by force majeure, and always reserving the evidence against the entries exhibited, by the other means legally admissible in suits.

4. If the books of the merchants possess all the legal requirements and are contradictory, the judge or superior court shall determine by the rest of the evidence, classifying it according to the general legal rules.

The supreme court, in an opinion of March 15, 1871, declared that if the books of one party only are kept with the due formalities, they are full proof against the other party if he does not keep them with said formalities.

ART. 49. Merchants and their heirs or successors shall preserve the books, telegrams, and correspondence of their business in general for the entire period which the latter may last, and until five years after the liquidation of all their commercial transactions and business.

Documents which specially relate to certain acts or transactions may be rendered useless or destroyed after the time of the limitation of the actions which could be brought by virtue thereof has elapsed, unless some question referring to the same directly or indirectly is pending, in which case they must be kept until the conclusion thereof.

Limitations of actions are treated of in articles 942 to 954.

The provisions of book 4 of the civil code must also be taken into consideration

TITLE IV.—GENERAL PROVISIONS RELATING TO COMMERCIAL CONTRACTS.

ART. 50. Commercial contracts in all that relates to their requisites, modifications, exceptions, interpretations, and extinction, and to the capacity of the contractors, shall be governed, in all that is not expressly established in this code or in special laws, by the general rules of common law.

The supreme court declared in an opinion of March 12, 1875, that, although commercial contracts are governed by the common law with relation to the causes which annul or invalidate the same, this general rule is limited by the modifications and restrictions established by the special commercial law; and in another of July 12, 1876, that, although commercial transactions must be decided by the special commercial legislation, and not by the common laws, there is no doubt, also, that in special cases, and in the absence of a specific provision, there may and must be applied to the same the prescriptions of the common law, in accordance with the jurisprudence established by the said court.

ART. 51. Commercial contracts shall be valid and serve as the basis of an obligation and cause of action in suits, whatever may be the form or in whatever foreign language they are executed, the class to which they correspond, and the amount involved, provided their existence is proven by some of the means established by the civil law. However, the declaration of witnesses shall not in itself be sufficient to prove the existence of a contract the consideration of which exceeds 1,500 pesetas if no other evidence is adduced.

Telegraphic correspondence shall only be the basis of an obligation between contracting parties who have previously admitted this medium in a written contract, and provided the telegrams fulfill the

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conventional conditions or tokens which may have been previously fixed by the contracting parties if they agreed thereto.

The article which we annotate treats only of witness evidence in order to restrain its natural effects in case it is made use of to prove the existence of commercial contracts, the consideration of which exceeds 1,500 pesetas, but it does not establish any special standard by which to estimate the probatory value of the declarations of witnesses in suits, but rather refers in this matter to the common law, in declaring that evidence of commercial contracts is to be governed by the provisions of the same, no matter what may be their form, kind, and consideration; and this being the case, it is evident that when such means of evidence is utilized, alone or in conjunction with any other, its value must be appraised in accordance with the prescriptions of article 659 of the law of civil procedure. (Opinion of November 12, 1892. *Gaceta* of December 27.)

The means of evidence established by law and to which the article we annotate refers are those fixed by article 578 of the law of civil procedure for the Peninsula, 577 of that for Cuba and Porto Rico, and 561 of that for the Philippines, which are—

(1) Admission in a suit; (2) public and solemn instruments; (3) private documents and correspondence; (4) the books of merchants which are kept with the formalities of this code; (5) reports of experts; (6) judicial investigations; (7) witnesses.

See also articles 1214 et seq. of the civil code.

ART. 52. There shall be excepted from the provisions of the foregoing article:

1. Contracts which, in accordance with this code or special laws, must be made by an instrument or require methods or necessary formalities for their validity.

2. Contracts executed in a foreign country in which the law requires certain instruments, methods, or formalities for their validity, although not required by the Spanish law.

In either case contracts which do not fulfill the requisites respectively demanded shall not be the basis for any obligation or cause of action in suits.

Commercial contracts for land transportation can not be considered as included in any of the cases prescribed by the article we annotate. (Opinion of the supreme court of September 28, 1889. *Gaceta* of November 12.)

See articles 9 et seq. of the civil code with regard to contracts executed in foreign countries.

ART. 53. Illicit agreements can not be the basis for any obligation or cause of action, notwithstanding that they involve commercial transactions.

An agreement shall be illicit when it is in conflict with law and good morals.

ART. 54. Contracts executed through correspondence shall be completed from the time an answer is made accepting the proposition or the conditions by which the latter may be modified.

ART. 55. Contracts in which an agent or broker mediates shall be completed when the contracting parties shall have agreed to their clauses.

The supreme court of justice, in an opinion of May 10, 1884, establishes as a precedent: That it is not legal for the person who, without objection, authorized with his signature an agreement in which a licensed broker mediated, to take refuge in a supposed error, not corrected at the proper time, which affects the action of the contract and which was committed by the former in drafting the instrument containing said contract, to counteract the force of the same and to oppose the protest of annulment presented by the opposite party.

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ART. 56. In a commercial contract containing an indemnification clause against the person who does not comply therewith, the party prejudiced may take legal steps to demand the fulfillment of the contract or the indemnification stipulated; but in utilizing one of these two actions the other one shall be annulled unless there is an agreement to the contrary.

ART. 57. Commercial contracts shall be executed and complied with in good faith according to the terms in which they were made and drafted, without evading the honest, proper, and usual signification of written or spoken words with arbitrary interpretations, nor limiting the effects which are naturally derived from the manner in which the contractors may have explained their wishes and contracted their obligations.

Commercial contracts must be fulfilled in accordance with the proper and genuine signification of their words and the manifest intention of the contracting parties. (Opinion of July 18, 1867.)

What has been stipulated and agreed upon is the supreme law of contracts and for their interpretation and honest understanding when any doubt arises regarding the same, besides considering the words in their strict acceptance, their spirit must be considered, deducing the real intention of the contracting parties by the statement of the clauses which they contain, that they have been agreed upon by the very acts of the persons subsequent to the contract, when they relate to what is in dispute. (Opinions of March 28, 1867, November 16, 1870, February 23, 1871, and November 9, 1887.)

When the clauses of a contract are clear and explicit, there is no necessity to have recourse to the rules for interpretation. (Opinions of April 11, June 19, 1865, and March 1, 1862.)

When it is not possible to deduce the intention of the contracting parties, the obscure clauses must be interpreted against the persons who expressed them. (Opinion of December 28, 1864.)

ART. 58. Should there appear any difference between the copies of a contract presented by the contracting parties and an agent or broker mediated in the execution thereof, what appears in the books of the latter shall be accepted as conclusive, provided they are kept in accordance with law.

ART. 59. Should any doubts arise which can not be decided in accordance with the provisions of article 2 of this code, the question shall be decided in favor of the debtor.

ART. 60. In all computations of days, months, and years, there shall be understood: A day shall comprise twenty-four hours; the months according to the manner they are designated in the Gregorian calendar, and a year shall embrace three hundred and sixty-five days.

Bills of exchange, promissory notes, and loans are excepted, with relation to which the special provisions established by this code shall be observed.

See articles 62 and 453 et seq. of this code.

ART. 61. Days of grace, courtesy, and others, which under any appellation whatsoever defer the fulfillment of commercial obligations, shall not be recognized, but only those which the parties may have previously fixed in the contract, or which are founded on a definite provision of law.

See article 942 of this code.

ART. 62. Obligations which do not have a limit previously fixed by the parties, or by the provisions of this code, shall be demandable ten

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days after having been contracted, if they can only be the basis for an ordinary action, and on the next day if an execution lies.

Articles 1429 of the law of civil procedure for the Peninsula, 1427 of that for Cuba and Puerto Rico, and 1411 of that for the Philippines, declare the deeds in which executions lie.

ART. 63. The effects of tardiness in the compliance with commercial obligations shall begin:

1. In contracts in which a day is fixed for their compliance by the will of the parties or by law, on the day following the one they fall due.

2. In contracts in which no such day is fixed, from the day on which the creditor legally summons the debtor or makes known to him the declaration of loss and damage made against him before a justice, notary, or other public official authorized to admit the same.

According to a declaration made by the supreme court in an opinion of September 15, 1871, a creditor can not be declared tardy who was not cited for the board of investigation of credits, although he shall not be prejudiced if his name is not included in the list of debts.

TITLE V.—PLACES AND BUILDINGS FOR COMMERCIAL TRANSACTIONS.

SECTION FIRST.—*Commercial exchanges.*[a]

ART. 64. Legally authorized public establishments in which merchants and licensed intermediary agents usually assemble to agree upon or carry out the commercial transactions mentioned in this section shall be called commercial exchanges.

ART. 65. The government may establish or authorize the creation of commercial exchanges wherever it may deem it convenient.

Associations established in accordance with this code may also create them, provided the faculty of doing so is one of their ends.

Notwithstanding this, in order that the quotations of transactions effected and published in this kind of exchanges may have an official character, it shall be necessary for the Government to authorize said transactions before being the subject of the public traffic, shown by the quotation.

The Government may grant said authorization, after procuring the information which it may consider necessary regarding its public convenience.

See the note to the second section of this title, and articles 1, 2, 3, and 4 of the exchange regulations cited in the note to the heading of this title.
Consult, also, article 81 of this code.

ART. 66. Existing commercial exchanges, as well as those newly created, shall be governed by the prescriptions of this code.

ART. 67. The following shall be the subject of transactions on exchange:

1. Public bonds and securities.

2. Industrial and commercial securities issued by private parties or associations or enterprises legally constituted.

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[a] The first chapter of the provisional regulations for the organization and government of commercial exchanges of December 31, 1885, is a complement to this section.

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3. Bills of exchange, drafts, promissory notes, and any other commercial paper.
4. The sale of precious metals, in coin or bullion.
5. Merchandise of all kinds and warehouse receipts.
6. The insurance of commercial effects against land or marine risks.
7. Transportation and freightage, bills of lading, and freight.
8. Any other transactions similar to those mentioned in the foregoing numbers, provided they are lawful.

The bonds and securities referred to in numbers 1 and 2 of this article shall only be included in the official quotations when their negotiation is authorized, in accordance with article 65, in the exchanges of private constitution, or which are declared negotiable on the exchanges officially established.

The law of exchanges, however, does not oppose that the interest of public instruments be negotiated outside of the establishment, in accordance with the general prescriptions of law. (Opinion of July 12, 1886.)

See article 28 and number 2 of article 48 of the exchange regulations.

ART. 68. In order to include them in the official quotations treated of in the foregoing article, under the appellation of public securities shall be understood:

1. Those which by means of an issue represent credits against the State, provinces, or municipalities, and are legally recognized as negotiable on exchange.
2. Those issued by foreign nations, if their negotiation has been duly authorized by the government after a report of the board of directors of the association of money brokers.

(See articles 28 to 35 of the exchange regulations now in force.)

ART. 69. There may also be included in the official quotations, as a matter of traffic on exchange, instruments of credit payable to bearer issued by national establishments, companies, or enterprises in accordance with law and the statutes of the same, provided that the resolution for their issue, with all the other requisites enumerated in article 21, are duly recorded in the commercial registry, as well as in those of property, when, on account of their nature, this should be done, and provided that these details have been previously reported to the board of directors of the association of money brokers.

ART. 70. In order to include in the official quotations as a matter of traffic on exchange, credit instruments payable to bearer of foreign enterprises established in accordance with the laws of the State in which said enterprises are situated, the previous authorization of the board of directors of the association of money brokers shall be necessary, after it has been proved that the issue has been made in accordance with law and with the statutes of the company which issues the same, and that all the requisites prescribed in the said provisions have been complied with, and provided there exist no reasons of public interest which may make them objectionable.

ART. 71. Instruments or securities issued by private parties can not be included in the official quotations without the authority of the board of directors of the association of money brokers, which shall always be granted when they are mortgage bonds or are sufficiently guaranteed in their judgment and under their liability.

This article regulates, so to say, the prescriptions of number 2 of article 67 of the present code.

See articles 28, 29, 31 et seq. of the exchange regulations.

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ART. 72. The following can not be included in the official quotations:

1. Instruments or securities issued by companies or copartnerships not recorded in the commercial registry.

2. Instruments or securities issued by associations which, although recorded in the commercial registry, have not made the issue in accordance with this code or with special laws.

ART. 73. The regulations shall fix the days and hours on which the meetings of the exchanges established by the Government or by private parties are to be held, after they have acquired an official character, and all that relates to their local government and police, which shall in each one of them be in charge of the board of directors of the association of money brokers. The Government shall fix the schedule of the fees of the brokers.

Articles 23 et seq. of the exchange regulations treat of the meetings of exchanges, and articles 68 to 71 of the fees of commercial agents.

SECOND SECTION.—*Transactions on exchange.*[a]

ART. 74. Every person, be he a merchant or not, may make contracts relating to public instruments, or industrial or commercial securities, without the intervention of a licensed money broker; but said contracts shall have no more value than arises from their form and which is granted them by the common law.

The memoranda of sales issued in exchange transactions, for cash as well as on time, in accordance with the prescriptions of this article, which take place without the intervention of an agent or broker, must be issued with a stamp of twenty pesetas, no matter what may be the value of the paper transferred. (Article 24 of the stamp law of September 15, 1892.)

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[a] According to the doctrine established by the supreme court, in an opinion of November 22, 1881, instruments payable to bearer issued by the state, corporations or companies authorized therefor, are not subject to restitution, provided that, with the legal formalities, they have been negotiated on exchange where there is one, and where there is none that a notary public or money broker took part in the transaction; which demonstrates that the provision to the effect that said documents must be negotiated on exchange, so that they can not be recovered, does not signify that the transactions must take place *in the building* of the exchange, but that they shall take place through the agent or public official determined by law, and with the other legal facilities which are to guarantee the same and give them the formality and character of exchange transactions.

The said court stated on the same question, in an opinion of February 24, 1872, that the object of the exchange law of February 8, 1854, was to facilitate and guarantee transactions made on exchange, but that it does not oppose in any manner whatsoever that holders of public documents negotiate the same outside of said establishment, and in the manner they may consider convenient, as is stated in its article 9; and another of March 21, 1862, establishes: That the royal decree of February 8, 1854, referring to exchange transactions, can not be applied to regulate the contracts executed in a place where no exchange has been established; but by article 9 of the same, and by the common laws, sale and resale contracts on time may be executed and be valid, although said royal decree be not applicable to them, and which can not even be considered as violated by the same. This doctrine was confirmed by another opinion of June 12, 1886.

With regard to the stamp tax to which the exchange policies in general are subject, see articles 21 to 24 of the law in force on said tax of September 15, 1892. (*Gaceta* of October 1.)

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ART. 75. Transactions which take place on exchange shall be complied with under the conditions and in the manner and form agreed upon by the contracting parties, and can be either for cash or on time, definite or optional, with or without brokerage, stating at the time of announcing the same the conditions which may have been stipulated in each transaction.

All these transactions may be binding and the basis of actions before courts.

With regard to the jurisprudence on this question, the opinion of February 7, 1885, is noteworthy, which states: That transactions on exchange having taken place through an agent, without the formalities which are necessary for those called for cash, the transaction loses the character of an exchange transaction for cash, and is converted into a private debt; and also the doctrine laid down by the supreme court in several opinions to the effect that transactions on time relating to the sale and resale of public instruments require as an indispensable condition in order to be binding, that they be made through agents, that the deeds which are the object of the transaction are in the possession of the vendor, that they are published on exchange and visséed by the board of directors, without which requisites they shall be considered fraudulent and punishable. (Opinion of October 16, 1889.)

Exchange transactions involving the allowance of differences are prohibited by law and can not be the basis for any sound legal action. (Opinions of May 16, 1888, and February 22, 1889.)

Transactions on time relating to the sale and resale of public instruments require as an indispensable condition in order to be binding that they take place through agents; that the papers which are the subject of the contract are in possession of the vendor, and that they be published on exchange and visséed by their board of directors, without which requisites they shall be considered fraudulent and punishable. (Opinion of October 16, 1889.)

ART. 76. Transactions for cash made on exchange must be consummated on the same day of their execution, or at the utmost, in the time intervening until the next meeting of the exchange.

The seller shall be under the obligation to deliver, without further delay, the instruments or securities sold and the purchaser to receive them, satisfying their price immediately.

Transactions on time and conditional ones shall be consummated in the same manner at the time agreed upon.

ART. 77. If the transactions take place through a licensed money broker, the latter being silent regarding the name of the principal, or between agents with the same conditions, and the licensed agent, vendor, or purchaser delays the fulfillment of the agreement, the person prejudiced by the delay may choose in the exchange itself between abandoning the contract, denouncing it to the board of directors, or demanding the compliance of the same.

In the latter case it shall be consummated through one of the members of the board of directors by purchasing or selling the public instruments agreed upon for account and risk of the tardy agent, without prejudice to the suit of the latter against the principal.

The board of directors shall order the realization of that part of the bond of the tardy agent necessary to immediately satisfy these differences.

In transactions involving industrial and commercial instruments, metals, or merchandise, the person who delays or refuses to consummate a contract shall be compelled to comply therewith by means of the actions which may be proper according to the prescriptions of this code.

See articles 43 and 63 of the exchange regulations.

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ART. 78. Whenever any transaction which can be quoted has been agreed upon, the money broker who may have taken part therein shall make a signed memorandum thereof, delivering it immediately to the announcer, who, after reading it aloud, shall transmit it to the board of directors.

See article 167 of the regulations for property rights.

ART. 79. The transactions which take place through a licensed broker, involving bonds or public instruments, shall be announced aloud immediately upon being agreed upon, without prejudice to transmitting the proper memorandum to the board of directors.

Other contracts shall be made known in the quotation bulletin, stating the maximum and minimum price of the purchases of merchandise, transportation and freightage, the rate of discount, and that of the exchanges for drafts and loans.

See article 38 of the commercial exchange regulations of December 31, 1885.

ART. 80. The boards of directors shall meet after the exchange hours, and in view of the negotiations of public instruments which result from the memoranda delivered by the licensed brokers, and with the notice of the sales and other operations in which the same took part, it shall prepare the list of quotations, transmitting a certified copy thereof to the commercial registry.

See articles 48, 49, and 50 of the exchange regulations, and 31 of this code, and 16 et seq. of the commercial registry regulations.

SECTION THIRD.—*Other public places for transactions—Fairs, markets, and shops.*

ART. 81. The Government, as well as commercial associations which fulfill the conditions mentioned in article 65 of this code, may establish exchanges or commercial agencies.

ART. 82. The competent authority shall announce the place and time of holding fairs and the police regulations which are to be observed in the same.

According to numbers 1 and 2 of article 72 of the municipal law in force in the Peninsula, the details referred to in the present article are of the exclusive jurisdiction of the town councils, and the general government can only interfere when fears are entertained that the decisions which may be adopted may cause some disturbance of public order. (Decision of July 8, 1878.)

ART. 83. Sale and resale contracts executed at fairs may be for cash or on time; the former must be complied with on the same day of their execution, or, at the utmost, within the following twenty-four hours.

After this time has elapsed without either of the contracting parties having demanded its compliance, they shall be considered null, and the deposits or earnest money which may have been delivered shall be forfeited to the person who received the same.

ART. 84. Questions which may arise at fairs regarding contracts executed at the same shall be decided in an oral trial by the municipal judge of the town in which the fair is held, in accordance with the prescriptions of this code, provided the value of the article in litigation does not exceed 1,500 pesetas.

Should there be more than one municipal judge, the one selected by the plaintiff shall be the one of competent jurisdiction.

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With regard to the fees which may be collected by judges with relation to their intervention in the questions referred to in the present article, the royal order of December 29, 1885, provided that the provisions of article 19 and 20 of the judicial tariffs in force be observed, which fix 2 pesetas as fees for all decisions, acts, and work in an oral trial, including the judgment, provided it does not exceed one hour, and 2 more pesetas for every hour in addition, the same amount being paid when the defendant having been cited, the trial is not held on account of the nonappearance of the plaintiff or of both.

ART. 85. The purchase of merchandise from warehouses or shops open to the public shall cause the forfeiture of the right in favor of the purchaser with regard to the merchandise acquired, reserving in a proper case the rights of the owner of the merchandise sold to institute the civil or criminal actions which may be proper against the person who sold the same without having a right to do so.

For the purposes of this forfeiture, as warehouses or shops open to the public shall be considered:

1. Those which may be established by recorded merchants.

2. Those established by merchants who are not recorded, provided the warehouses or shops remain open to the public for a period of eight consecutive days or that they have been announced by means of signs, cards, or posters in the places themselves, or through circulars distributed to the public or inserted in the newspapers of the locality.

ART. 86. The money in which the payment of merchandise bought for cash is effected, in shops or public establishments, shall not be recoverable.

ART. 87. Purchases and sales which take place in establishments shall always be presumed as made for cash unless there is proof to the contrary.

TITLE VI.—COMMERCIAL AGENTS AND THEIR RESPECTIVE OBLIGATIONS.

SECTION FIRST.—*General provisions common to commercial agents.*

ART. 88. The following shall be subject to the commercial laws as commercial agents:

Money and stock brokers.

Commercial brokers.

Ship-broking interpreters.

With regard to the qualifications required of commercial agents, see articles 94 and 112 of this code; and with regard to their capacity to trade, article 14, No. 5, of the same. and article 96.

ART. 89. The services of stock brokers or agents, no matter what may be their class, may be rendered by Spaniards and foreigners; but licensed agents and brokers only may issue certifications.

The means of proving the existence and conditions of instruments or contracts in which agents who are not licensed take part shall be those established by the commercial or common law to justify obligations.

See Chapter II of the exchange regulations in force (articles 10 to 22).

ART. 90. In every commercial center there may be established an association of stock brokers, another of commercial brokers, and in maritime centers one of ship-broking interpreters.

ART. 91. The associations treated of in the foregoing article shall be composed of the individuals who may have obtained the proper certificate of possessing the qualifications required by this code.

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ART. 92. At the head of each association there shall be a board of directors elected by the members.

ART. 93. The licensed agents shall have the character of notaries in all that refers to the negotiation of public instruments, industrial and commercial securities, merchandise, and the other commercial acts included in their office in the respective center.

They shall keep a registry book in accordance with the prescriptions of article 36, entering therein in proper order, separately and daily, all the transactions in which they may have taken part, being moreover permitted to keep other books with the same formalities.

The books and policies of licensed agents shall be admitted as evidence in suits.

See article 58 of the present code and 596, No. 2, of the law of civil procedure now in force.

In order that the books and policies of agents may have an official character and be admitted as evidence in suits, it is necessary that the acts and transactions which have been effected through money brokers have taken place with an official character. (Opinion of January 26, 1889.)

The stamp law in force of September 15, 1892, prescribes that the registry books which by virtue of the provisions of the second paragraph of the article we annotate must be kept by licensed money and stock brokers, as well as any other ones they may desire to keep with the same formalities, shall be subject to the same tax as the books of merchants. (See the addition to article 33 of this code.)

With regard to the tax to which contracts of transfer of public instruments, industrial and commercial securities, and merchandise, in which commercial agents take part, referred to in this article, are subject, see the first clause of Letter E and the second one of the law for the modification of the tax on property rights, numbers 5 and 6 of article 1, and article 2 of the law on said tax of September 25, 1892, and articles 3, number 5, 16, 18, 36, 55, rule 3, 72, 117, number 4, and 125, number 10, of the regulations of the same date.

ART. 94. In order to become a member of any of the associations referred to in article 90, it shall be necessary—

1. To be a Spaniard or a naturalized foreigner.
2. To have capacity to trade in accordance with this code.
3. Not to be suffering any correctional or punitive penalty.
4. To prove good moral conduct and well-known honesty by means of a judicial report of three recorded merchants.
5. To constitute in the depository or in its branches, or in the Bank of Spain (Banco de España), the bond fixed by the Government.[a]
6. To obtain from the secretary of public works (*fomento*) the proper certificate, after hearing the board of directors of the respective association.

With regard to the reference to naturalization and capacity to trade in question, see articles 17 to 25 and articles 4, 5, 6, 11, 13, and 14 of the civil code in force; and with reference to the constitution of the bonds treated of in number 5, see articles 61 et seq. of the provisional regulations for the organization and government of commercial exchanges of December 31, 1885.

ART. 94. (Cuba and Porto Rico.) (See the note to the foregoing text.)

ART. 95. It shall be the obligation of licensed agents:

1. To assure themselves of the identity and legal capacity to trade of the persons in whose affairs they act, and, if proper, of the legitimacy of the signatures of the contracting parties.

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[a] Although it is not stated in the modification, we understand that for Cuba and Porto Rico the depositories and banks of those islands must be referred to, and that the words *secretary of public works* (fomento) should be substituted by *Governor-General*.

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When the latter do not have the free disposition of their property, agents can not act without previously obtaining the authorization prescribed by law.

2. To submit the transactions with exactness, precision, and clearness, abstaining from making suppositions which might lead the contracting parties into error.

3. To preserve secrecy in all that refers to the business they may transact and not reveal the names of the persons who intrust the same to them, unless it is otherwise required by law, or by the character of the transactions, or if the persons interested consent to their names being made public.

4. To issue at the expense of the persons interested, who may request them, certificates of the respective entries of their contracts.

ART. 96. Licensed agents can not—

1. Trade for their own account.

2. Constitute themselves underwriters of commercial risks.

3. Negotiate securities or merchandise for the account of individuals or associations which have suspended payments, or which have been declared in bankruptcy or insolvent, unless they have obtained their discharge.

4. Acquire for themselves the effects the negotiation of which was intrusted to them, except in case the agent is to answer for noncompliance of the purchaser to the vendor.

5. Issue certifications which do not directly refer to facts which appear in the entries on their books.

6. Discharge the duties of cashiers, bookkeepers, or employees of any merchant or commercial establishment.

With regard to their liability for the infraction of the provisions of this article, see article 22 of the exchange regulations now in force, to which we have been referring.

ART. 97. The persons violating the provisions of the preceding article shall be removed from their office by the Government, after hearing the board of directors and the interested party, who may appeal from this decision through administrative litigation (*via contenciosa administrativa*).

They shall, moreover, be civilly liable for the damage caused by any neglect of the obligations of their office.

With regard to the provisions contained in this paragraph the supreme court established in an opinion of December 3, 1870, that the agent who takes part in a transaction in order to authorize the respective certificate is not civilly liable for the consequences of any fraud perpetrated by the vendor of any deeds, if the latter contracted directly with said vendor.

ART. 98. The bonds of stock brokers, commercial brokers, and shipbroking interpreters shall be specially liable for the results of the business of their office, the persons prejudiced having a right of preferred real action against the same without prejudice to any others which may be proper according to law.

This bond can not be restored, notwithstanding that the agent ceases in the discharge of his office, until the period fixed in article 946 has elapsed, unless a claim has been filed within the same period.

The bond shall only be subject to liabilities not connected with the office when those of the latter are first fully secured.

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If the bond is divided by the liabilities to which it is subject, or its real value is diminished for any reason whatsoever, it must be replaced by the agent within the period of twenty days.

See articles 62 and 63 of the exchange regulations in force and 946 of this code.

ART. 99. In case of disability, incapacity, or suspension from office of stock brokers, commercial brokers, or ship-broking interpreters the books which they are to keep in accordance with this code shall be deposited in the commercial registry.

See articles 16 and 17 of the commercial registry regulations and No. 17 of the schedule of fees of commercial registers.

SECTION SECOND.—*Licensed money and stock brokers.*

ART. 100. Money and stock brokers shall be authorized to:

1. Take part privately in negotiations and transfers of all kinds of public instruments or securities which can be quoted, defined in article 68.

2. Take part, in concurrence with commercial agents, in all other exchange transactions and contracts, subject to the liabilities appertaining to these transactions.

Article 22 of the exchange regulation states the penalties which shall be incurred by agents who take part in other transactions than those for which they are authorized by the article we annotate.

ART. 101. Stock agents who take part in purchase or sale contracts or in other transactions for cash or on time shall be liable to the purchaser for the delivery of the instruments or securities involved in said transactions and to the vendor for the payment of the price or indemnity agreed upon.

See article 37 of the exchange regulations.

The liability established by this article is limited to three years, in accordance with the provisions of article 945 of this code.

ART. 102. Stock brokers shall enter in their books, in correlative numerical order and by dates, all the transactions in which they take part.

With reference to the books which they are to keep, in our judgment, articles 93 and 114 of this code offer a clear and definite explanation, the first one establishing as obligatory the registry book only, and making it optional to keep other books or not, and the second, in referring to ship-broking interpreters, prescribes that they are to keep a book of translations, a register of the names of captains, etc., and a daybook of the charters in which they take part. With regard to the manner of keeping these books and the persons who are to do so, see the second paragraph of article 19 and article 20 of the exchange regulations now in force.

ART. 103. Stockbrokers shall deliver to each other a signed memorandum of every transaction agreed upon, on the same day on which it took place. Another memorandum, signed in the same manner, shall be delivered to their constituents, and the latter shall deliver one to the agents, stating their acquiescence with the terms and conditions of the transaction.

The memoranda or policies which agents deliver to their constituents, and those which they mutually issue, shall be evidence against the agent who subscribes them in all cases of claims which may arise by virtue thereof.

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In order to determine the net amount which can be claimed, the board of directors shall issue a certificate stating the difference in cash which appears against the constituents in view of the memoranda of the transaction.

The acquiescence of the constituents, after their signature has been acknowledged in a suit, shall include an execution, provided the certificate of the board of directors mentioned in the preceding paragraph is presented.

This is in harmony with the provisions of the sixth case of article 1429 of the law of civil procedure for the Peninsula, 1427 of that for Cuba and Porto Rico, and 1411 of that for the Philippines.

ART. 104. Stock agents, besides the obligations common to all agents enumerated in articles 95, 96, 97, and 98, shall be civilly liable for the industrial or commercial instruments or securities which they may sell after the denunciation of said securities as illegitimate has been made public by the board of directors.

Articles 56 and 59 of the exchange regulations in force and articles 559 to 565 of this code complete and explain this article.

ART. 105. The president, or the person acting in his stead, and two members at least of the board of directors shall always be present at the meeting of the exchange in order to decide what may be proper in the cases which may arise.

The board of directors shall fix the rate of the monthly liquidations in closing the exchange on the last day of each month, taking as a basis the average of the quotations of the same day.

The same board shall be in charge of receiving the partial liquidations and preparing the general one of the month.

Articles 54 and 55 of the exchange regulations in force complete and explain this article.

Taking into consideration the provisions of this article, and in order that the provisions of articles 76, 93, and 102 of this code may be exactly complied with, it was prescribed by the royal order of April 12, 1892 (*Gaceta* of the 14th), that instruments payable to bearer which are delivered in consummating transactions on time and in full payment of the same corresponding to the liquidations of April, 1892, and succeeding months, should have attached, like the transactions for cash, an invoice subscribed by the vendor, stating its class, series, and number, authorizing at the same time the board of directors of the Association of Money and Stock Brokers of Madrid to adopt the form of invoice of delivery of paper, which must always be done through a stock agent, and also all the measures which it may consider convenient on the subject in order that the general liquidation be not interrupted.

SECTION THIRD.—*Licensed commercial brokers.*

ART. 106. Besides the obligations common to all commercial agents enumerated in article 95, licensed commercial brokers shall be under the obligation:

1. To answer legally for the authenticity of the signature of the last conveyer in negotiations of bills of exchange and other negotiable paper.

2. To take part and certify, in contracts of purchase and sale, to the delivery of the paper and to its payment, if the persons interested demand it.

3. To collect from the conveyer and deliver to the buyer the drafts or negotiable paper which may have been negotiated through him.

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4. To collect from the buyer and deliver to the conveyer the value of the bills of exchange or negotiable paper which is negotiated.

ART. 107. Licensed brokers shall enter in their books in separate entries all the transactions in which they may have taken part, stating the names and the domiciles of the contracting parties and the subject and conditions of the contracts.

In sales they shall state the quality, amount, and price of the article sold, place and date of the delivery, and the manner in which the price is to be paid.

In negotiations of bills of exchange, they shall enter the dates, places of issue and payment, terms and due dates, names of the drawer, endorser and payer, those of the conveyer and purchaser, and the exchange agreed upon.

In insurance there shall be stated, with reference to the policy, besides the number and date of the same, the names of the underwriter and of the insured, object of the insurance, its value according to the contracting parties, the premium agreed upon, and, in a proper case, the place of loading and unloading, and a precise and exact statement of the ship or of the means of transportation.

According to the stamp law in force of September 12, 1892, the entry books of licensed commercial brokers referred to in the article we annotate shall be subject to the same payment as the books of merchants. (See the note to article 33 of this code.)

ART. 108. Within the day on which the contract is executed, the licensed brokers shall deliver to each one of the contracting parties a signed memorandum containing all that the latter may have agreed to.

ART. 109. In cases in which, on account of the convenience of the parties, a written contract is executed, the broker shall certify at the foot of the duplicates and shall keep the originals.

ART. 110. Licensed brokers may, in concurrence with the ship-broking interpreters, discharge the duties of the latter, subjecting themselves to the prescriptions of the following section of this title.

See article 113.

ART. 111. The association of brokers, where there is not one of agents, shall issue on each day of negotiation a memorandum of the current exchanges and of the prices of merchandise, for which purpose two members of the board of directors shall be present at the meeting of the exchange, a certified copy of said memorandum being transmitted to the commercial registry.

In order to better understand the contents of the article we annotate, take into consideration the contents of article 100, as well as articles 68 and 113 of this code, and articles 14, 15, and 49 of the exchange regulations.

SECTION FOURTH.—*Licensed ship-broking interpreters.*

ART. 112. In order to discharge the duties of ship-broking interpreter, besides possessing the qualifications required of agents in article 94, it shall be necessary to prove, either by examination or by a certificate of a public establishment, the knowledge of two modern foreign languages.

By a royal order of September 20, 1891, for the purposes of harmonizing the precepts of articles 112 and 113, which we annotate, with article 51 of the customs regulations, it was decided that ship-broking interpreters can only authenticate the translation of documents written in languages with which they are

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acquainted, be they either the ones they proved their acquaintance with when they received their certificate or any other ones they may have later acquired; and that when documents are in question, written in a language with which they are not acquainted, the custom-house officials may employ other interpreters to translate the same.

ART. 113. The obligations of ship-broking interpreters shall be—

1. To take part in charter contracts, marine insurance, and bottomry bonds, when requested to do so.

2. To assist captains and supercargoes of foreign vessels and serve as interpreters in the declarations, protests, and other business which may take place in courts and public offices.

3. To translate the documents that the said foreign captains and supercargoes are obliged to present in the said offices, provided there arises any doubt regarding their understanding, certifying that the translations have been well and faithfully made.

4. To represent the same in suits when they, the shipowner or consignee of the vessel, do not appear.

With regard to the prescriptions of number 1, see articles 580, number 9; 583 and 611, number 4; 617, 621, and 719 et seq. of this code; and also the addition to article 112 on account of the relation it bears to number 3.

This article is in accord with article 50 of the customs regulations now in force, which were modified by a royal order of September 20, 1891 (see the addition to the preceding article), in order to harmonize it with the provisions of this code. (Royal order of December 12, 1891. *Gaceta* of February 12, 1892.)

ART. 114. It shall furthermore be the obligation of ship-broking interpreters to keep:

1. A copying book for the translations they may make, entering the same literally.

2. A registry of the names of the captains to whom they render the services proper to their office, stating the flag, name, class, and tonnage of the vessels and the ports of departure and their destination.

3. A daybook of the contracts of charter in which they take part, stating in each entry the name of the vessel, its flag, register, and tonnage; those of the captain and of the charterer; value and destination of the cargo; money in which it is to be paid; advances on the same, should there be any; the goods of which the cargo consists; conditions agreed upon between the charterer and captain regarding demurrage, and the date previously fixed on which to commence and finish loading.

ART. 115. The ship-broking interpreter shall keep one copy of the contract or contracts which may have been executed between the captain and the charterer.

Book Second.—SPECIAL COMMERCIAL CONTRACTS.

TITLE I.—COMMERCIAL ASSOCIATIONS.

SECTION FIRST.—*Manner of establishing associations and their kinds.*

ART. 116. Articles of association by which two or more persons obligate themselves to place in a common fund any property, industry, or any of these things, in order to obtain profit, shall be commercial, no matter what its class may be, provided it has been established in accordance with the provisions of this code.

After a commercial association has been established, it shall have legal representation in all its acts and contracts.

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As prescribed by the laws of civil procedure of the Peninsula, as well as of Cuba and Porto Rico, in article 66, the domicile of associations, civil as well as commercial, shall be the town designated as such in the articles of copartnership or of incorporation or in the regulations governing them; if this does not appear, the provisions relating to merchants shall be observed, whose legal domicile is, according to article 55 of the said law, the town where they have the principal office for their commercial transactions; the persons having commercial establishments under their charge in different judicial subdistricts being subject to personal actions in the town where they have the principal establishment or in the town they have obligated themselves, at the option of the plaintiff.

According to the provisions of the first article cited there are excepted from the rules laid down copartnerships with relation to litigation which may be instituted between the partners, the general provisions of the said laws being observed with regard to the same.

The provisions of article 50 of said law amended for the Philippines are identical.

ART. 117. Articles of association, executed with the essential requisites of law, shall be valid and binding between the parties thereto, no matter what form, conditions, and combinations, legal and honest, are embraced therein, provided they are not expressly prohibited by this code.

The establishment of land, agricultural, issue, and discount banks, of loan and mortgage loan associations, of concessionnaires of public works, manufacturing, general warehouses, of mines, of the establishment of principals and life annuities, of insurance and other associations, the purpose of which is any industrial or commercial enterprise, shall be unrestricted.

See article 179, the provisions of which limit the prescriptions of the above in so far as the issue of bank notes is concerned.

Notwithstanding the obligation of recording in the commercial registry the articles of association, the agreements of this class which combine the essential requisites of law shall be valid and binding between the parties thereto, no matter what their form may be. (Opinion of November 10, 1890.)

ART. 118. Contracts executed between commercial associations and any other persons capable of binding themselves shall be valid and binding, provided the same are legal and honest, and that the requisites mentioned in the following article have been complied with.

ART. 119. Every commercial association before beginning business shall be obliged to record its establishment, agreements, and conditions in a public instrument, which shall be presented for record in the commercial registry, in accordance with the provisions of article 17.

Additional instruments which modify or alter in any manner whatsoever the original contracts of the association are subject to the same formalities, in accordance with the provisions of article 25.

Partners can not make private agreements, but all must appear in the articles of copartnership.

The following should be cited as important jurisprudence with regard to this point: Even though an association has some error in its establishment, it shall always be binding in favor of third persons, if it has acted as such. (Opinion of January 10, 1882.)

Although all articles establishing commercial associations must be recorded in the public registry of the capital of the province, the legal effect of the omission shall be the loss of the rights of action which may have been acquired thereby, but not by third persons who may have executed contracts with the association. (Opinion of January 25, 1888.)

Commercial associations do not have the right to institute suits until their articles of association have been recorded. (Opinion of May 14, 1884.)

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The amendments to articles of association do not affect the employees of the association who entered the same before the amendment and who are entitled to the salary offered them when they entered upon their services. (Opinion of December 31, 1889.)

See article 228 of this code.

ART. 120. The persons in charge of the management of the association who do not comply with the provisions of the foregoing article shall be responsible together with the persons not members of the association with whom they may have transacted business in the name of the same.

ART. 121. Commercial associations shall be governed by the clauses and conditions of their articles, and in all that is not determined and prescribed therein, by the provisions of this code.

See articles 16, 17, and 21, articles 116 et seq. of this section, and in general in the following sections of this title, those relating to the formalities which associations are to observe in their establishment and transactions.

ART. 122. As a general rule commercial associations shall be established by the adoption of any of the following forms:

1. The regular general copartnership in which all the partners, under a collective and commercial name, bind themselves to participate, in the proportion which may be established, in the same rights and obligations.

2. The limited copartnership to which one or more persons contribute a specific amount of capital to a common fund, in order to be liable for the social transactions executed exclusively by others under a collective name.

3. The corporation, in which the members form the common fund by means of specific parts or portions, represented by shares or in any other unquestionable manner, leaving its management to removable managers or administrators, who represent the company under an appropriate denomination according to the purpose or undertaking the funds are destined to.

ART. 123. Commercial associations may be, according to the character of their operations—

Loan associations.
Banks of issue and discount.
Mortgage loan associations.
Mining associations.
Agricultural banks.
Concessionnaires of railroads, tramways, and public works.
General warehouse companies.

And of other kinds, provided their agreements are legal, and industry or commerce is their object.

The provisions of the latter part of this article are not violated when, by reason of the stipulations and by subsequent acts, it is reasoned in an opinion that there was no social agreement, but a lease of services. (Opinion of November 10, 1890.)

See article 117 of this code.

ART. 124. Mutual fire insurance companies, companies of tontine life combinations for help in old age, and companies of any other class, as well as cooperative companies of production, loan, or consumption, shall only be considered commercial, and shall be subject to the provisions of this code when they are engaged in commercial transactions which are not mutual or when they are converted into associations charging a fixed premium.

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By an order of the Regent of the Kingdom of June 26, 1870, confirmed by a royal order of March 10, 1885, it was ordered that the documents referred to in article 3 of the law of October 19, 1879, be inserted gratuitously in the *Gaceta* and official bulletins, in so far as they refer to cooperative associations, the basis of which are personal services, or the capital of which does not exceed 10,000 pesetas, for which purpose the latter shall be obliged to forward their regulations to the Secretary of Government, through the governors of the provinces.

SECTION SECOND.—*General copartnerships.*

ART. 125. The articles of general copartnership must state:

The names, surnames, and domiciles of the partners.

The firm name.

The names and surnames of the partners to whom the management of the firm and the use of its signature is intrusted.

The capital which each partner contributes in cash, credits, or property, stating the value given the latter or the basis on which their appraisement is to be made.

The duration of the copartnership.

The amounts which, in a proper case, are to be given to each managing partner annually for his private expenses.

There may be also included in the articles the other legal agreements and special conditions which the partners may wish to make.

When no special duties are assigned to each one of the managers appointed in the articles of copartnership, the management shall be looked upon as a single body. (Opinion of November 18, 1889.)

See article 139 of this code.

ART. 126. The general copartnership must transact business under the name of all its members, of several of them, or of one only, it being necessary to add in the latter two cases to the name or names given the words "and company."

This general name shall constitute the firm name or signature, in which there may never be included the name of a person who is not at the time a partner in the association.

Those who, not being members of the partnership, include their names in the firm denomination shall be subject to joint liability, without prejudice to the penal liability which may be proper.

(See article 147.)

ART. 127. All the members of the general copartnership, be they or be they not managing partners of the same, are personally and jointly liable with all their property for the results of the transactions made in the name and for the account of the partnership, under the signature of the latter, and by a person authorized to make use thereof.

In an opinion of December 17, 1873, the supreme court declared that all the members of a general copartnership, even though they be not administrators of the capital, are jointly liable for the results of the transactions made in the name and for the account of the partnership, although, in order that the property of the partners may be seized, it is necessary to first liquidate the property of the same; and in another opinion of January 8, 1881, said court established that all the property which belongs to the common capital of a commercial general copartnership is liable for the results of the transactions made in the name and for the account of said copartnership, none of the partners being permitted to divert from the common fund any amount for the payment of his private creditors, nor for any other purpose whatsoever, with the exception of the amount assigned him for expenses, nor to dispose of what is due him, even in case the common capital is divided, until all the liabilities of the said copartnership have been paid and canceled.

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ART. 128. The partners not duly authorized to make use of the firm signature shall not make the company liable through their acts and contracts, even though they execute them in the name of the latter and under its signature.

The civil or criminal liability for these acts shall be incurred exclusively by the authors thereof.

ART. 129. If the management of the general copartnerships has not been limited by a special instrument to one of its members, all of them shall have the right to take part in the direction and management of the common business, and the partners present shall come to an agreement with regard to all contracts or obligations which may interest the company.

In an opinion of September 23, 1867, the supreme court laid down as doctrine that after an obligation had been established in favor of several members of a copartnership, any one thereof could legally demand its compliance for the benefit of the partnership, provided it does not appear that the administration and management of said copartnership has been intrusted to one of them exclusively.

ART. 130. No new obligation shall be contracted against the will of one of the managing partners, should be have expressly stated it; but if, however, it should be contracted it shall not be annulled for this reason, and shall have its effects without prejudice to the liability of the partner or partners who contracted it to the common capital on account of the failure they may cause.

ART. 131. Should there be partners especially intrusted with the management, the other partners can not oppose nor hinder the actions of the former nor prevent its effects.

ART. 132. When the special power to manage and to use the signature of the copartnership has been conferred in a special condition of the articles of copartnership, the person who obtained the same can not be deprived thereof; but should the latter make an improper use of said power, and his management cause serious damage to the common capital, the rest of the partners may appoint from among themselves a comanager to take part in all transactions, or they may request the rescission of the articles before the judge or court of competent jurisdiction, who shall declare them annulled should said damage be proven.

ART. 133. In general copartnerships all the partners, be they managing or not, have a right to examine the condition of the administration and of the bookkeeping and to make the objections which they may consider proper, in accordance with the agreements contained in the articles of copartnership or in the general provisions of law.

ART. 134. Transactions made by the partners in their own names and with their private funds shall not be communicated to the company nor shall it be liable therefor, provided they are of a kind that partners may legally make for their own account and risk.

The supreme court, in an opinion of January 30, 1873, laid down that when the manager of an association contracts in a private capacity, the former shall not be liable.

ART. 135. The partners can not apply the funds of the copartnership nor make use of the firm signature for business for their own account; and should they do so, they shall lose to the benefit of the

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company that part of the profit which in the transaction or transactions made in this manner may be due them, and the articles of copartnership in so far as they are concerned shall be annulled, without prejudice to the return of the funds they may have made use of, and to indemnify the copartnership for all loss and damage which it may have suffered.

ART. 136. In general copartnerships which do not transact business in a specific branch of commerce their members can not make transactions for their own account without the previous consent of the copartnership, which can not refuse it without proving that it will suffer thereby manifest and pecuniary damage.

Partners who do not comply with this provision shall contribute to the common funds the profit they may derive from these transactions and shall individually suffer the losses should there be any.

In stating in this article "which have not adopted a specific branch of commerce" it must be understood that it is not mentioned in the articles of copartnership, as is deduced from the provisions of the following article:

ART. 137. If the copartnership fixed in its articles of copartnership the branch of commerce it is to engage in, the partners may legally transact all commercial business they may desire, provided it does not belong to the kind of transactions the copartnership of which they are partners is engaged in unless there is a special agreement to the contrary.

ART. 138. Partners giving their services and not contributing any capital (*socio industrial*) can not engage in transactions of any class whatsoever, unless expressly permitted to do so by the company, and should they do so the partners furnishing the capital (*socios capitalistas*) may, at their option, remove them from the company, depriving them of the profits due them in the same, or they may enjoy the profits said partners may have obtained in violation of this provision.

ART. 139. In general or in limited copartnerships, no partner may remove or divert from the common funds a larger amount than that assigned to each one for his personal expenses; should he do so, he may be compelled to repay it as if he had not completed the portion of the capital which be bound himself to contribute to the copartnership.

See articles 170 and 171 of this code.

ART. 140. Should there not have been stated in the articles of copartnership the portion of the profits to be received by each partner, said profits shall be divided pro rata, in accordance with the interest each one has in the copartnership, partners who have not contributed any capital, but giving their services, receiving in the distribution the same amount as the partner who contributed the smallest capital.

ART. 141. Losses shall be computed in the same proportion among the partners who have contributed capital, without including those who have not, unless by special agreement the latter have been constituted as participants therein.

ART. 142. The copartnership must credit to the partners the expenses they may incur, and indemnify them for the damages they may suffer, immediately and directly by reason of the business which the former may intrust to them; but it shall not be bound to indemnify

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for the losses the partners may incur by their own fault, in an accidental case, or on account of any other reason, independent of the business, during the time they took in transacting the same.

ART. 143. No partner can transfer to another person the interest he may have in the copartnership, nor can he substitute another person in his place for the discharge of the work under his charge in the partnership administration, without the previous consent of the partners.

ART. 144. The damage suffered by the copartnership by reason of malice, abuse of powers, or serious negligence on the part of one of the partners, shall obligate the author thereof to indemnify it, should the other partners request it, provided an express or virtual approval or ratification of the act on which the claim is based can not be deduced in any manner whatsoever.

SECTION THIRD.—*Limited copartnerships.*[a]

ART. 145. The same statements shall be included in articles of limited copartnerships which are required for those of general copartnerships.

According to an opinion of the supreme court of October 8, 1881, the lack of registration of the articles of commercial copartnerships affects the rights of the partners among themselves, but not those of third persons who may have contracts with them.

ART. 146. Limited copartnerships must transact business under the name of all the members thereof, of several of them, or of one only, it being necessary to add in the latter two cases to the name or names given, the words "and company" and in all cases the words "limited copartnership."

ART. 147. This general name shall constitute the firm name, in which there may never be included the names of special partners.

Should any special partner include his name or permit its inclusion in the firm name, he shall be subject, with regard to persons not members of the copartnership, to the same liabilities as the managing partners, without acquiring any more rights than those corresponding to his character of special partner.

(See articles 144 and 149 of this code.)

ART. 148. All the members of the copartnership, be they or be they not managing partners of the limited copartnership, are jointly and severally liable for the results of the transactions of the latter in the same manner and to the same extent as in general copartnerships, as set forth in article 127.

They shall furthermore have the same rights and obligations which are prescribed in the foregoing sections for partners in general copartnerships.

The liability of special partners for the obligations and losses of the copartnership shall be limited to the funds which they contributed or bound themselves to contribute to the limited copartnership, with the exception of the case mentioned in article 147.

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[a] See article 37 et seq. of the regulations for the organization and government of commercial registries.

According to an opinion of the supreme court of January 25, 1868, after a limited copartnership has been dissolved without debts, its partners may each withdraw what may belong to him.

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Special partners can not take any part whatsoever in the management of the interests of the copartnership, not even in the capacity of special agents of the managing partners.

The supreme court, in confirming the provisions of this article in its third paragraph, established in an opinion of December 4, 1861, that special partners discharge their duty in contributing to the copartnership the amount agreed upon.

Special partners of copartnerships have not sufficient personality to object in administrative litigation to a royal order which may be prejudicial to the same, and which can only be impugned by the managing partner or by the collective partners. (Opinion of June 28, 1889. *Gaceta* of September 2, 1890.)

ART. 149. The provisions of article 144 shall be applicable to partners in limited copartnerships.

According to an opinion of the supreme court of April 17, 1868, every partner is liable to the copartnership for abuse of powers, carelessness, negligence, etc.

ART. 150. Special partners can not examine the condition and situation of the management of the partnership except at the times and under the penalties prescribed in the articles of copartnership or in additional ones.

Should the articles not contain any provisions of this character the balance of the copartnership shall be communicated to the copartners at the end of the year without fail, exhibiting for a period which can not be less than fifteen days the exact data and documents proving said balance and permitting the transactions to be understood.

SECTION FOURTH.—*Corporations.*[a]

ART. 151. The articles of incorporation must include—

The names, surnames, and domiciles of the incorporators.

The name of the corporation.

The designation of the person or persons who are to direct the affairs of the same and the manner of filling vacancies.

The corporation capital, stating the value at which property, not cash, contributed has been appraised, or the basis on which the appraisement is to be made.

The number of shares into which the corporation capital is divided and represented.

The period or periods within which the portion of the capital not subscribed at the time of incorporation is to be contributed, otherwise stating the person or persons authorized to determine the time and manner in which the assessments are to be made.

The time the corporation is to continue in existence.

The transactions the capital is to be employed in.

The periods and manner of calling and holding general ordinary meetings of members, and the cases and manner of calling and holding extraordinary ones.

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[a] After a corporation has been legally incorporated, its statutes and regulations constitute the law of the contract, and the mutual rights and duties of the incorporators shall be decided thereby. (Opinion of November 30, 1871.)

Whenever an action is to be brought against corporations at the place of their domicile, as such shall be understood the one fixed in the statutes, even though it has agents in other places, who shall be considered as simple agents in representation of the corporation, which is the only one liable. (Opinion of April 15, 1860.)

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The submission to the vote of the majority of the meeting of members, duly called and held, of such matters as may properly be brought before the same.

The manner of counting and constituting the majority, in order to adopt binding resolutions, at ordinary as well as at extraordinary meetings.

There may furthermore be included in the articles all legal agreements and special conditions the members may agree to.

See article 119 of this code and 37 et seq. of the commercial registry regulations.

In an opinion of June 30, 1888, it is laid down that in order that resolutions adopted at a general meeting be binding and efficient with regard to dissenting members it is an indispensable requisite that they be absolutely in accordance with the agreements and conditions of the articles of incorporation, which must be strictly interpreted.

ART. 152. The name of a corporation shall be adequate to the purpose or purposes of the branch of business adopted.

No name can be adopted identical with that of a preexisting corporation.

See number 3 of article 122.

There is no doubt that paragraph 2 intends to include in the code a class of ownership of these names and a guaranty similar to that of trade-marks, etc.

ART. 153. The liability of the members of a corporation for the obligations and losses of the same shall be limited to the funds they contributed or bound themselves to contribute to the corporate capital.

ART. 154. The corporate capital, composed of the stock and of the accrued profits, shall be liable for the obligations contracted in its management and administration by a person legally authorized thereto and in the manner prescribed in the articles of incorporation, by-laws, or regulations.

The opinion of the supreme court of July 12, 1883, confirms the provisions of this article, according to which the property of the corporation is liable for the management of the same, and can not be applied to private obligations of its members.

ART. 155. The managers of corporations shall be designated by the members thereof in the manner determined in the articles of incorporation, by-laws, or regulations.

ART. 156. The managers of a corporation are its agents, and during the time they observe the rules of the commission they shall not be subject to personal nor to joint liability on account of the corporation business; and if, by reason of infraction of the laws and the statutes of the corporation, or if by acting in violation of the legitimate resolutions adopted at general meetings, they should incur losses, and there should be several persons responsible therefor, each one of the latter shall answer pro rata.

The supreme court laid down in an opinion of April 2, 1863, that one of the things which the manager of a corporation can not do is to contract loans for the same without being expressly authorized thereto; and in an opinion of January 30, 1883, that when the manager of a corporation transacts business in a private capacity he does not bind the corporation; in another opinion of December 5, 1874, that when a corporation authorizes its manager or administrator to carry out the purposes of the corporation he does not require special authorization for drafts; and in an opinion of May 23, 1883, that if an action to secure a final judgment against a corporation is in question, the latter is the one to be required to pay, and to which notice of auctions is to be given, through its agents.

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ART. 157. Corporations are under the obligation to publish monthly in the *Gaceta de Madrid*[a] a detailed balance of the business, stating the rate at which the balance on hand in securities is calculated, as well as all kinds of property, the prices of which can be quoted on exchange.

ART. 158. The members or stockholders of corporations can not examine the management thereof nor make any investigation with regard thereto except at the times and in the manner prescribed by their statutes and regulations.

ART. 159. Corporations existing prior to the publication of this code, and which are still governed by their regulations and by-laws, may choose between continuing to be governed thereby or by the provisions of this code.

See the royal order in the note to article 3 of the royal decree promulgating this code.

With regard to Cuba and Porto Rico the royal decree of January 28, 1886, in its article 2, which extended this code to said islands, provided: "That corporations existing on April 30, 1886, must make use of the right granted them by article 159 of the code of commerce by means of a resolution, adopted at a general extraordinary meeting called expressly for the purpose in accordance with their by-laws, and in a proper case in accordance with the law of January 21, 1870, which is declared applicable to the islands of Cuba and Porto Rico.

"These resolutions must be published in the *Gaceta* of Havana or of Porto Rico, as the case may be, and a copy shall be presented in the Commercial Registry."

The provisions of this code can not be applied to the associations which have not made use of the right of option in accordance with this article and with article 3 of the royal decree of August 22, 1885, by which this code was put into operation. (Opinion of June 30, 1888.)

SECTION FIFTH.—*Shares.*

ART. 160. The common capital of limited copartnerships belonging to the special partners and that of corporations may be represented by shares or other equivalent certificates.

See section 3 of chapter 1, title 3, of the stamp law of September 15, 1892, with regard to shares and stock issued by copartnerships and corporations.

ART. 161. The shares may be payable to order or to bearer.

ART. 162. The shares payable to order must be recorded in a book which the copartnership or corporation shall keep for this purpose, and in which subsequent transfers shall also be entered.

ART. 163. The shares payable to bearer shall be enumerated, and shall be recorded in stub books.

See article 38 et seq. of the regulations for the organization and government of commercial registries.

ART. 164. In all certificates of shares, either payable to order or to bearer, there shall always be entered the sum which has been paid on account of its nominal value or that they are fully paid.

In shares payable to order, until the full cost thereof has been paid, the first subscriber or holder of the share, his assignee, and each person succeeding the latter, should they be transferred, shall answer

[a] The code of commerce in force in the Philippines states *Gaceta de Manila* instead of *Gaceta de Madrid*.

Although it is not especially so stated in the corresponding amendments, the same changes should be understood for Cuba and Porto Rico, with relation to the official gazettes of the said islands, as is clearly deduced from the last paragraph but one of the preamble of the decree.

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for the payment of the portion not contributed, jointly and at the option of the directors of the corporations, against whose liability, thus determined, no agreement whatsoever suppressing it can be established.

After an action to enforce said liability has been instituted against any of the persons mentioned in the foregoing paragraph no new action against any other of the holders or assignees of the shares can be instituted, except when it is proved that the person who was first or previously proceeded against is insolvent.

When shares not fully paid for are payable to bearer the persons who appear as the holders thereof only shall be liable for the payment of their share. Should they not appear, making a personal claim impossible, the corporations or copartnerships may order the calling in of the certificates corresponding to the shares on which the requisite quotas for the full payment of the value of each one have not been satisfied.

In such case the copartnerships or corporations shall have the right to issue duplicate certificates of the same shares, in order to convey them for and against the account of the defaulting holders of the certificates annulled.

All shares shall be payable to order until 50 per cent of their nominal value has been paid in. After said 50 per cent has been paid in they may be converted into shares payable to bearer, if it is thus resolved upon by the copartnerships or corporations in their by-laws or by means of special acts subsequent to the same.

ART. 165. New series of stock can not be issued before the total payment of the series previously issued has been made. Any agreement to the contrary included in the articles of copartnership or of corporation, in the by-laws or regulations, or any resolution adopted at a general meeting of members in opposition to this precept shall be null and of no value.

ART. 166. Corporations may only purchase their own shares with the profits of their capital for the purpose of amortization.

In case of a reduction in the corporate capital, when it is proper in accordance with the provisions of this code, there may also be amortization with a portion of said capital, the legal measures which may be considered advisable being employed.

ART. 167. Corporations can never give guaranties by pledging their own shares.

ART. 168. Corporations sitting in a general meeting of stockholders previously called for the purpose shall have the power to resolve upon the reduction or increase of the corporate capital.

In no case can these resolutions be adopted at ordinary meetings unless it was stated, in the call or sufficient time in advance, that an increase or reduction of the capital would be discussed and voted upon.

The by-laws of each corporation shall fix the number of members and the amount of capital which shall be required to be present at meetings at which said capital is to be reduced or increased or in which the modification or dissolution of the corporation is to be treated of.

In no case shall it be less than three-fourths of the number of the former and two-thirds of the nominal value of the latter.

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The directors may immediately take steps to carry out the resolution of reduction adopted legally at a general meeting if the capital remaining after said reduction has been made exceeds 75 per cent of the amount of the debts and obligations of the corporation.

Otherwise the reduction can not take place until all the debts and obligations pending at the date of the resolution have been liquidated and paid, unless the copartnership or corporation obtains the previous consent of its creditors.

For the execution of this article the directors shall present to the judge or court an inventory, in which the stock held shall be appraised at the average quotation for the last quarter and the property by a capitalization of the profits accruing therefrom according to the legal rate of interest on money.

As an explanation of the contents of this article, see article 151 of this code.

ART. 169. Funds belonging to foreigners invested in corporations shall not be subject to reprisals in case of war.

See the declaration between Spain and Great Britain for the purpose of defining the situation of corporations and of other commercial and financial associations, of January 28, 1883, published in the *Gaceta* of February 2 of the same year.

SECTION SIXTH.—*Rights and obligations of members.*

ART. 170. If within the period agreed upon any member does not contribute to the common funds the amount of capital he has obligated himself to contribute, the association may choose between proceeding to obtain an execution against his property to recover the portion of capital not contributed, or to rescind the contract with regard to the member in default, retaining the amounts which are due the common capital.

For the proceedings to secure an execution see in title 15 of the law of civil procedure for the Peninsula, articles 1429 et seq., articles 1427 et seq. of that for Cuba and Porto Rico, and articles 1411 et seq. of that for the Philippines.

The supreme court established, in an opinion of June 24, 1860, that an action *pro socio* can only be instituted by those who, being members of an association, desire to enforce the fulfillment of the obligations which they mutually imposed on each other.

ART. 171. A member who, for any reason whatsoever, delays the full contribution of his capital, after the period fixed in the articles of association has elapsed, or should said period not have been fixed therein, from the time the fund is established, shall pay into the common funds the legal interest on the money he has not delivered at the proper time and the amount of the damages and losses he may have occasioned by reason of his default.

See article 218, No. 4, of this code.

ART. 172. When the capital or the part thereof which a partner is to contribute consists of property, the appraisement thereof shall be made in the manner prescribed in the articles of association, and should there be no special agreement on the matter the appraisement shall be made by experts selected by both parties and according to current prices, subsequent increases or reductions therein being for the account of the association.

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In case of disagreement between the experts a third one shall be designated, selected by lot from among persons of his class who appear as paying the highest taxes in the locality, in order that he may adjust said disagreement.

As an addition and explanation of the article we treat of, see articles 2117 of the law of civil procedure in force in the Peninsula, 2078 of that for Cuba and Porto Rico, and 2038 of that for the Philippines.

ART. 173. The managers or directors of commercial associations can not refuse to permit partners or stockholders to examine all the vouchers of the balances drawn up showing the condition of the management, with the exception of the provisions of articles 150 and 158.

See the articles referred to and article 2166 of the law of civil procedure.

ART. 174. The creditors of a member shall not have, with regard to the association, not even in the case of the failure of the same, any further right than that of attaching and collecting the amounts which may be due the debtor partner by reason of profits or liquidation.

The provisions contained in the latter part of the foregoing paragraph shall not be applicable to stock companies, except when said stock is payable to order, or when the legitimate owner thereof is established without question, should it be payable to bearer.

The supreme court, in an opinion of July 12, 1883, stated that the property of an association is liable in the first place to the management of the same, and the creditors of the members may only collect the interests of the latter after the definite liquidation with relation to them has taken place; and in another opinion of December 19, 1870, that, in the case of the failure of an association, the private creditors of the members are not included among those of the association, but that after the latter have been satisfied, the former may make use of their right against the residue due the debtor member.

SECTION SEVENTH.—*Special rules for loan associations.*

ART. 175. The following transactions are mainly the business of these associations:

1. To receive subscriptions or contract loans for the government, and provincial or municipal corporations.
2. To acquire public funds and shares or securities of all kinds of industrial undertakings or of loan associations.
3. To create companies of railroads, canals, factories, mines, docks, general warehouses, lighting, excavations and breaking of ground, irrigation, drainage, and any other industrial enterprises or those of public utility.
4. To effect the fusion or transformation of all kinds of commercial associations, and take charge of the issue of shares or securities of the same.
5. To administer and lease all kinds of taxes and public services, and execute for their own account or assign, with the approval of the Government, contracts subscribed for the purpose.
6. To sell or give as security all shares, bonds, and securities acquired by the association, and exchange them when they consider it advisable.
7. To make loans on public effects, shares or bonds, produce, commodities, crops, estates, factories, vessels and their cargoes and other property, and open credits in account current, receiving as a guaranty property of the same kind.

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8. To effect for the account of other associations or persons all kinds of collections and payments, and transact any other business for the account of others.

9. To receive on deposit all kinds of negotiable paper and cash, and keep current accounts with any corporations, copartnerships, or persons.

10. To draw and discount bills of exchange and other exchange paper.

Loan associations which are established or incorporated after the promulgation of the marine mortgage law, which was done on August 23, 1893, and which propose, either specially and exclusively or as one of their branches of business, to make loans on vessels, may issue certificates or bonds of marine credit.

Loan associations in existence at the time this law goes into operation which have included in the business to which they may devote themselves that of making loans on vessels, in accordance with the provisions of this article, can not issue any bonds or marine credit certificates without amending their by-laws for the purpose, after the proceedings and requisites established therein and in the articles of association, and not without previously recording the new agreement in the commercial registry, in accordance with the provisions of article 25 of this code.

The marine credit bonds or certificates issued by the associations authorized thereto, shall be payable to bearer or to order, with or without amortization, and with shares repayable at fixed periods or by lot, with or without premium.

The nominal capital of these securities and the amounts of the premiums, should there be any, which are in circulation, shall not exceed the amount of the capital of the loans contracted.

When by reason of the amortization, or for any other reason whatsoever, mortgage creditors repay the whole or part of their loans, a similar sum of securities will be set apart for amortization, which may be in circulation unless other loan contracts have been negotiated in the mean time for an equal or greater sum. (Law of August 21, 1893.)

ART. 176. Loan associations may issue obligations for an amount equal to that invested in, and which is represented by securities on hand, in accordance with the provisions of the title relating to the commercial registry.

These obligations shall be payable to order or to bearer at a fixed period, which shall not be less than thirty days in any case, with the amortization, should there be any, and the rate of interest fixed.

By a royal order of December 10, 1894 (*Gaceta* of January 9, 1895), it is ordered among other things—

"That in order to make use of the power granted commercial associations by article 176 of the code of commerce the latter must comply with the provisions of the royal order of January 16, 1893, and strictly observe the provisions contained in the said article and in other articles of the code which may be applicable, it being forbidden in the issue of obligations payable to bearer to establish clauses or conditions tending to annul the purposes of the said legal provisions."

By a royal order of January 16, 1893, it was ordered that the obligations which by virtue of the provisions of this article are issued and placed in circulation hereafter by loan associations which can legally issue this class of obligations, shall be at least 25 centimeters long and 20 centimeters wide without the coupons they must necessarily have at their borders, declaring, however, obligations legally issued and which are already in circulation exempted from complying with these requisites, provided they fulfill the requirements of the royal order of July 16, 1881.

Said provision prescribed that obligations issued by associations or private parties conform with the form and dimensions, at least, of the commercial promissory notes issued by the Treasury as public securities, in order that by this means they can not be confounded in any manner whatsoever with bank notes, which the Bank of Spain is exclusively authorized to issue. (*Gaceta* of August 4, 1881.)

See the addition to article 179.

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SECTION EIGHTH.—*Banks of issue and discount.*

ART. 177. The following is the principal business of these institutions:

Discounts, deposits, current accounts, collections, loans, drafts, and contracts with the Government or public corporations.

ART. 178. Banks can not make transactions extending over a period of more than ninety days.

Neither shall they discount drafts, promissory notes, or other commercial paper without the guaranty of two responsible firms.

ART. 179. Banks may issue notes payable to bearer, but their admission in business transactions shall not be compulsory. This privilege of the issue of notes payable to bearer shall continue in suspense, however, during the time the privilege actually enjoyed by the National Bank of Spain, by virtue of special laws, continues.

All legislation in this code with relation to the issue of notes payable to bearer is suspended by the express provision of the above article during the time of the existence of the privilege of the Bank of Spain; therefore, the royal order of July 16, 1881, issued by the treasury department, must be considered as still in force, for the purpose of preventing that under other rights a privilege be granted in conflict with the exclusive privilege enjoyed for the fiduciary circulation. (Royal order of January 16, 1893. *Gaceta* of the 27th.)

See the addition to article 176.

ART. 179. (Cuba and Porto Rico.) Banks may issue notes payable to bearer, but their admission in business transactions shall not be compulsory. This privilege of the issue of notes payable to bearer shall continue in suspense, however, during the time the privilege actually enjoyed by the *Spanish Bank of the Island of Cuba* continues.

The laws in force on the issue of notes referred to in this article are contained in the royal decree of March 19, 1874, granting privileges to the Bank of Spain for the issue of notes, and in that of August 16, 1878, granting the same privilege to the colonial banks.

A royal order of December 10, 1894 (*Gaceta* of January 9, 1895), contains among other provisions:

"That credit copartnerships or corporations are prohibited to issue paper money under the name of deposit receipts, orders on current accounts, or under any other name by which a commercial contract appears to be evidently assumed to give legal appearance to a manifest infraction of the second paragraph of article 179 of the code of commerce."

ART. 180. Banks shall keep in their vaults in cash at least one-fourth of the amount of the deposits and current cash accounts and of notes in circulation.

ART. 181. Banks are under the obligation to change their notes for cash upon their presentation by the bearer.

Noncompliance with this obligation shall give rise to an action to secure a judgment in favor of the bearer, after a demand for payment, through a notary.

For the application of this article see No. 5 of article 1429 of the law of civil procedure in force in the Peninsula, the same number of article 1429 of that for Cuba and Porto Rico, and article 1411 of that for the Philippines.

According to an opinion of April 25, 1876, the legal dissolution of banks of issue deprives notes of the character of fiduciary money, with the exception of the rights against the institution on account of a voluntary deposit, according to article 23 of the law of January 28, 1856.

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ART. 182. The value of the notes in circulation, together with the sum represented by the deposits and current accounts, can not exceed, in any case, the amount of the cash reserve and of the securities on hand which can be realized within the maximum period of ninety days.

ART. 183. Banks of issue and discount shall publish, at least once a month, and under the liability of their directors, in the *Gaceta* and official bulletin of the province statements of their condition.

ART. 183. (Philippines.) Banks of issue and discount shall publish, at least once a month, and under the liability of their directors, statements of their condition in the *Gaceta of Manila and in the official bulletin, where there is one.*[a]

SECTION NINTH.—*Railroad and other public work companies.*

ART. 184. The following are the principal transactions of these companies:

1. The construction of railroads and other public works of any kind whatsoever.

2. The operation thereof, either in perpetuity or during the period of time fixed in the concession.

ART. 185. The capital stock of the company, together with the subsidy, should there be any, shall represent at least half the amount of the total estimate of the work.

The companies can not establish themselves before half of the capital stock has been subscribed to and 25 per cent thereof has been realized.

ART. 186. Railroad companies and companies of other public works may issue bonds payable to bearer or to order unrestrictedly and without further limitations than those contained in this code and those established in their respective by-laws.

These issues must be recorded in the commercial registry of the province; and if the bonds are secured by mortgage, said issues shall furthermore be recorded in the proper registries of property.

The issues of prior dates shall have preference over subsequent ones for the payment of coupons and for the amortization of the bonds, should there be any.

ART. 187. The bonds issued by companies shall be subject to amortization or not, at their option, and in accordance with the provisions of their by-laws.

Whenever railroads or other public works enjoying a subsidy from the State are in question, or for the construction of which a legislative or administrative concession was granted, if the concession is temporary, the bonds issued by the concessionnaire company shall be withdrawn by amortization or extinguished within the period of said concession, and the State shall receive the work at the termination of this period free from all incumbrances.

ART. 188. Railroad companies and other public work companies may sell, assign, and transfer their rights in the respective undertakings, and may also combine with other similar companies.

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[a] The same change should be understood as made for Cuba and Porto Rico, as is deduced from the paragraph next to the last of the preamble of the respective decree.

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In order that these transfers and fusions may be effectual, it shall be necessary—

1. That the stockholders unanimously agree thereto, unless it is otherwise prescribed in the by-laws with relation to a change in the object of the company.

2. That all the creditors of said companies also agree thereto. This consent shall not be necessary when the purchase or fusion takes place without confounding the guaranties and mortgages and when the creditors retain their respective rights in full.

See article 107, case number 6, of the mortgage law for the Peninsula and for the colonies, which contains the restrictions under which railroads, canals, bridges, and other works destined to the public service may be mortgaged, the operation of which has been granted by the government, and the buildings and lands which not being directly and exclusively destined to the said service belong to private ownership, even though they are annexed to said works.

ART. 189. For the transfers and fusions of the companies referred to in the foregoing article no authorization whatsoever shall be necessary from the government, even though the work has been declared of public utility for the purposes of the right of the exercise of eminent domain, unless the company enjoys a direct subsidy from the State, or has been incorporated by a law or other administrative provision.

ART. 190. The action to secure an execution referred to in the law of civil procedure with regard to the due coupons of securities issued by railroad companies and companies of other public works, as well as with relation to the bonds drawn by lot for amortization, should there be any, can only be brought against the net receipts of the company and against the other property owned by the same, which is not a part of the road, or work, nor necessary for the operation.

ART. 191. Railroad and other public work companies may employ the funds remaining from the construction, operation, and payment of credits when they fall due, in the manner they may deem fit, in accordance with their by-laws.

Said surplus shall be invested at such times, as not to leave in any case the construction, preservation, operation, and payment of credits unattended to, under the liability of the directors.

ART. 192. After the forfeiture of a concession has been declared the creditors of a company shall have as a guaranty:

1. The net receipts of the company.

2. When said receipts are not sufficient the net proceeds from the works sold at public auction for the time still remaining of the concession.

3. The other property owned by the company, if it does not constitute part of the road or of the work, or is not necessary for its movement or operation.

With regard to the manner of enforcing the guaranty referred to in the foregoing article, there is in force, according to article 1448 of the Law of Civil Procedure for the Peninsula, 1446 of that for Cuba and Porto Rico, and 1430 of that for the Philippines, the law of November 12, cited, of which articles 9 et seq. establish the procedure to be observed therefor.

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SECTION TENTH.—*General warehouse associations.*[a]

ART. 193. The following are the principal transactions of the associations:

1. The deposit, preservation, and custody of produce and merchandise intrusted to them.

2. The issue of receipts to order or to bearer.

ART. 194. The receipts issued by general warehouse associations for the produce and merchandise they accept to care for shall be negotiable, shall be transferred by indorsement, assignment, or in any other manner transferring ownership, according as to whether they are issued to order or to bearer, and shall have the force and value of commercial bills of lading.

These receipts must necessarily state the class of goods, with the number or amount each one represents.

ART. 195. The owner of the receipts is vested with the full ownership of the commodities deposited in the warehouses of the association, and shall be exempted from all liability for claims brought against the receiver, the indorsers, or prior owners, except if said claims arise from the transportation, storage, and preservation of the merchandise.

ART. 196. If a creditor who has legal possession of a receipt as security should not be paid on the day his claim falls due, he may bring an action against the association to gain possession of the goods on deposit sufficient to cover his credit, and shall have preference over other debts of the depositor, with the exception of those mentioned in the foregoing article, who shall enjoy the preference.

ART. 197. The sales referred to in the preceding article shall be made in the warehouse of the association, without the necessity of a judicial decree, at a public auction previously announced, and through a licensed broker, where there is any, and otherwise through a notary.

ART. 198. General warehouse associations shall in all cases be liable for the identity and preservation of the goods on deposit, according to law relating to deposits for which compensation is agreed on.

SECTION ELEVENTH.—*Mortgage loan association or banks.*[b]

ART. 199. The following shall be the principal transactions of these associations or banks:

1. To make loans on real estate on time.

2. To issue mortgage bonds and certificates.

ART. 200. Loans shall be made on mortgages of real estate the ownership of which is recorded in the registry in the name of the person creating said mortgage, and shall be repaid in annual payments.

The mortgage certificates of mortgage banks shall bear a stamp of 10 céntimos, which shall be placed on the original and on the stub, according to article 158 of the law of September 15, 1892.

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[a] "With regard to these associations," says Mr. Alonso Martinez in his statement of reasons preceding the project of the code, "the project does not include any modification whatsoever, limiting itself to reproducing the law of July 9, 1862, which laid down for the first time the rules for this class of associations, the doctrine of which supports the principles of commercial liberty and of protection to the interests of third persons."

[b] The secretary says in his statement of reasons: "With regard to these associations or banks, the necessary rules are issued, laid down in order to guarantee the rights of the creditors, and to avoid, so far as possible, the prejudices they might suffer if certain restrictions were not established."

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ART. 201. These associations and banks can not issue bonds nor certificates to the bearer during the time the privilege actually enjoyed by virtue of special laws by the Mortgage Bank of Spain continues.

The privilege referred to in this article is contained in the royal decree of July 24, 1875, which is as follows:

1. The mortgage bank created in Madrid under the name of Mortgage Bank of Spain, by the law of December 2, 1872, shall hereafter be the only one of its class, unless the Cortes order otherwise, the additional article of that law extending its provisions of a general character to other establishments of land credit which may be created, being therefore without effect, as well as the privilege granted by the law of December 19, 1869, to unrestrictedly establish banks or associations for mortgage loans with the right to issue mortgage certificates.

2. There shall be understood as included in the privilege granted by article 23 of the said law of December 2, 1872, to the mortgage bank for the purpose of negotiating mortgage certificates or bonds issued, the right to purchase and sell said bonds or certificates, etc.

ART. 201. (Cuba, Porto Rico, and the Philippines.) The power to issue bonds and certificates payable to bearer, referred to in the second paragraph of article 199, will not modify the concessions made by the Government in favor of other associations or banks, in accordance with the royal decree of August 16, 1878.

By this royal decree the exclusive privilege of fiduciary circulation was granted to the colonial banks, which shall be denominated Spanish Bank of Cuba (Banco Español de Cuba), Spanish Bank of the Philippines (Banco Español de Filipinas), and Spanish Bank of Porto Rico (Banco Español de Puerto Rico).

The following royal order of July 13, 1895, published in the *Gaceta* of the 16th, is of the greatest importance and of true transcendence for the banking institutions of our colonies:

"YOUR EXCELLENCY: There having been submitted to the full council of state, for a report thereon, the proceedings relating to the project of regulations for mortgage loans of the Spanish Bank of Porto Rico, said high body renders the following report:

"'YOUR EXCELLENCY: With royal order communicated by the department under the charge of Your Excellency on June 12 last, received on the 17th, there was forwarded to this council the annexed proceedings on a plan of regulations for mortgage loans of the Spanish Bank of Porto Rico, in order that said full council might render an opinion as to whether a special law will be necessary in order that said credit institution might issue bonds or mortgage certificates payable to bearer, or whether the management can itself grant the exclusive privilege for the purpose, in accordance with the provisions of the royal decree of August 16, 1878.

"'The approval of certain resolutions of said bank having been refused, which referred to a plan of regulations for mortgage loans, because the bureaus of that department believed that said regulations should be the subject of a special concession granted by the Government in accordance with the royal decree of August 16, 1878, the governor of the bank, in a communication of October 14 of said year requested, while making several observations on the subject, that the said concession be granted in a subsidiary manner; and a report on the proposed plan of regulations having been made thereon by the bureau, and this council having been asked for an opinion, an opinion was rendered to the effect that, said concession being necessary and said bank having applied a portion of its capital in making loans without the same, said institution had acted in an arbitrary and illegal manner; this declaration being necessary in order that said bank might request the requisite concession in due form, after which, if the request is complied with, it would be proper for the bank to propose the extension of its by-laws and definite regulations for mortgage loans, for which reason the council did not examine the plan of regulations attached to the proceedings.

"'By a royal order of February 14, 1894, this was decided in concurrence with the council, the resolution of the secretary containing the following statements: 'The authority having been requested in a subsidiary manner in the communication of October 14, in view of the changes made in the plan of regulations, let

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the bank draw up the extension of its by-laws and definite regulations.' And in consequence thereof the Governor-General of Porto Rico, with a letter, No. 228, of March 18 last, forwards a certified copy of the resolutions of the general board of stockholders of the bank, adopted in the sessions of the 25th of the preceding February and on the 2d of this month, in which there is proposed a plan of addition to the by-laws of the institution for the regulation of mortgage transactions.

"'The proper bureau of that department, with which the direction agrees, abstains from studying the regulations proposed in detail until the question raised by article 1 of the same is decided, and which assigns to the bank the exclusive privilege of issuing mortgage certificates within the territory of the island payable to bearer. After examining this particular the bureau understands that such exclusive privilege can not be granted except by means of a special law, because notwithstanding the reference made by article 201 of the code of commerce in force in Porto Rico to the royal decree of August 16, 1878, several associations or banks may exist with the power to issue certificates payable to bearer without one bank only having the exclusive privilege requested. Therefore the report of this council, requested by Your Excellency, includes these particulars.

"'After having examined with the greatest care the foregoing data, says the council, to the effect that, according to the royal decree of August 16, 1878, and in accordance with article 13 of the budget law of Porto Rico for 1886–87, there was authorized by a royal decree of March 23, 1887, the concession of the bank of that island, a simple reading of the provisions therein cited is sufficient to decide the actual question of the proceedings, because in the royal decree of 1878, as well as in the other provisions mentioned, the privilege of fiduciary issue is granted exclusively to the colonial banks as institutions of issue and discount; that is to say, that although said royal decree authorizes the banks to devote a portion of their capital to transactions which are properly mortgage transactions, it does not in any manner whatsoever, neither directly nor indirectly, assume that the issue of mortgage certificates or bonds has the character of an exclusive privilege, because the royal decree in its second article expressly limits this particular to the fiduciary issue included in the original distinctive character of the bank, and article 16 does not authorize the exclusive issue of certificates with relation to mortgage transactions; it being necessary to add that, according to articles 1 and 2 of the royal decree of March 23, 1887, the exclusive privilege refers only to the issue of bank notes, while article 3, in authorizing that the reserve fund be devoted to mortgage transactions up to 20 per cent thereof, does not establish an exclusive privilege for this class of transactions.

"'But should the above statements not be sufficient, and, examining the subject, in view of the provisions of the code of commerce in force in the island, the same conclusion must be accepted, because article 199, in its second paragraph, grants all mortgage loan associations or banks the privilege of issuing mortgage bonds or certificates, and although article 201 states that this privilege does not modify the concessions made by the Government in favor of other associations or banks, in accordance with the royal decree of August 16, 1878, there must be taken into consideration that in the preamble of the royal decree of January 28, 1886, by which the said code was extended to Porto Rico, there was stated that the Government, in accordance with the codification commission, had decided not to grant any more privileges than the one already granted the Spanish Bank of Cuba, and that the rule of liberty having to be considered preponderating in transactions, the explanation of article 201 does not deprive other banks of this character from making mortgage transactions.

"'Therefore, although the terms of article 201 of the code can not be considered perfectly clear and exact, in saying that the preamble of the said royal decree (with the report of the codification commission) constitutes an authentic interpretation of the said code with regard to the points contained in the proceedings, we can not do less than support the general rule of liberty.

"'The council believes, therefore, in accordance with the bureaus of that department, that the administration has not the power to grant the Bank of Porto Rico the exclusive privilege to issue mortgage certificaes payable to bearer, and that, notwithstanding the reference made by article 201 of the code of commerce to the royal decree of August 16, 1878, several associations or banks may exist at the same time in the island with the power to issue said certificates.

"'Such is the opinion of the council; Your Excellency, however, will decide, together with His Majesty, what you may consider best.'

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"And His Majesty the King (whom God preserve), and in his name the Queen Regent of the Kingdom, having agreed to the foregoing opinion, by his royal order I communicate it to Your Excellency for your information and consequent action, it also being the wish of His Majesty that the form of regulations on mortgage loans forwarded by Your Excellency be modified, taking into consideration the foregoing resolution, and this royal order to be published in full in the *Gaceta de Madrid* and in that of that capital.

"May God preserve Your Excellency many years.

"MADRID, *July 13, 1895.*

"CASTELLANO.

"The GOVERNOR-GENERAL OF PORTO RICO."

ART. 202. Loans made to provinces and to towns are excepted from the mortgage required by article 200 when said provinces or towns are legally authorized to contract loans within the limit of said authorization, and provided the repayment of the capital loaned, together with interest and expenses, is assured by revenues, taxes, and capitals, or surtaxes or special imposts.

Loans to the State are also excepted, which can be made, furthermore, on promissory notes of purchasers of national property.

Loans to the State, to provinces, or to towns may be repaid within a period of less than five years.

ART. 203. In no case may loans exceed half the value of the property on which the mortgage is to be created.

The basis and manner of appraising the real property shall be fixed exactly in the by-laws or regulations.

ART. 204. The amount of the coupon and the rate of amortization of mortgage certificates, which are issued by virtue of a loan, shall never exceed the amount of the net annual profits which the real estate offered and taken in mortgage as security for the said loan produce on an average during five years. The computation shall always be made with relation to the loan, the income of the property mortgaged, and the annual premium of the certificates issued by virtue of said mortgage. This annuity may at any time be less than the net income of the respective real estate mortgaged as security for the loan and for the issue of the certificates.

ART. 205. When the real estate mortgaged diminishes in value by 40 per cent, the bank may request the increase of the mortgage in order to cover said depreciation, or the annulment of the contract, and the debtor shall choose between these two measures.

The provisions of this article and those of article 206 are suspended in the Peninsula and adjacent islands as a consequence of the privilege established in article 201.

ART. 206. Mortgage loan banks may issue mortgage certificates to an amount equal to the total value of the loans on real estate.

They may, furthermore, issue special obligations for the amount of the loans to the State, to provinces, or to towns.

ART. 207. The mortgage certificates and special obligations treated of in the foregoing article shall be payable to order or to bearer, with or without amortization, for short or long periods, with or without premium.

These certificates and obligations, their coupons and the premiums, shall be the basis for an execution in the manner prescribed in the law of civil procedure.

With regard to the procedure to be pursued in order to obtain the cash value of the mortgage certificates, obligations, etc., see Title XV of the Law of Civil

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Procedure, articles 1429 to 1543 for the Peninsula, 1427 to 1478 of that for Cuba and Porto Rico, and 1411 et seq. of that for the Philippines.

ART. 208. The mortgage certificates and special obligations, as well as their interest and coupons, and the premiums assigned to them, shall be secured, with preference over all other creditors or obligations, by the credits and loans in favor of the bank or association which may have issued the same and which represent said credits and loans, being, therefore, jointly and severally liable for the payment thereof.

Without prejudice to this special guaranty, they shall enjoy the general guaranty of the capital of the association; also with preference in regard to the latter over the credits resulting from other transactions.

ART. 209. Mortgage loan banks may also make loans secured by mortgage, repayable in a period of less than five years.

These loans at short time shall be without amortization, and shall not authorize the issue of mortgage obligations or certificates, and must be made from the capital of the common funds and from the accrued profits.

ART. 210. Mortgage loan banks may receive, with or without interest, capitals on deposit, and employ half thereof in making advances for a period not to exceed ninety days on their mortgage obligations and certificates, as well as on any other deeds which banks of issue and discount receive as security.

In case of default in payment on the part of the person who secured the loan, the bank may demand the sale of the certificates or deeds given as security, in accordance with the provisions of article 323.

ART. 211. All combinations for mortgage loans, including mutual associations of landowners, shall be subject, in so far as the issue of mortgage certificates and obligations is concerned, to the rules contained in this section.

SECTION TWELFTH.—*Special rules for agricultural banks and associations.*

ART. 212. The following shall be the principal transactions of these associations:

1. To make loans in cash or in kind, for a period not to exceed three years, on products, crops, cattle, or other special pledges or securities.

2. To guarantee with their signature promissory notes and paper demandable within a period not to exceed ninety days, in order to facilitate its discount or negotiation to the owner or farmer.

3. Other transactions, the purpose of which is to favor the breaking or improving of ground, draining of lands, and the development of agriculture and other industries related thereto.

ART. 213. Agricultural loan banks or associations may have agents outside of their domicile who may personally answer for the solvency of the landowners or tenants who request the assistance of the association, placing their signature on the promissory note which said association is to discount or indorse.

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ART. 214. The guaranty or indorsement placed by these associations or their representatives, or by the agents referred to in the foregoing article, on the promissory notes of the landowner or farmer shall entitle the bearer thereof to demand their payment directly, and to obtain an execution on the day any of the subscriptions falls due.

ART. 215. The promissory notes of the landowner or farmer, be they either held by the association or negotiated by the same, shall when they fall due give rise to the execution which may be proper, in accordance with the law of civil procedure, against the property of the landowner or farmer who may have subscribed them.

According to number 5 of article 1429 of the law of civil procedure in force in the Peninsula (1427 of that for Cuba and Porto Rico and 1411 of that for the Philippines).

ART. 216. The interest and commission which the agricultural loan associations and their agents or representatives are to receive shall be unrestrictedly stipulated within the limits fixed by the by-laws.

ART. 217. Agricultural loan associations can not devote to the transactions referred to in paragraphs 2 and 3 of article 212 more than 50 per cent of the common capital, applying the remaining 50 per cent to the loans referred to in number 1 of the same article.

SECTION THIRTEENTH.—*Expiration and liquidation of commercial associations.*

ART. 218. The partial rescission of the articles of general and limited commercial copartnerships shall be proper in any of the following cases:

1. When a partner makes use of the common capital and of the firm name for private business.
2. When a partner interferes in the management of the company who has no right to do so, according to the conditions of the articles of copartnership.
3. When any partner intrusted with the management commits a fraud in said management or in the bookkeeping of the copartnership.
4. When any partner fails to contribute to the common capital the amount stipulated in the articles of copartnership, after having been requested to do so.
5. When a partner transacts commercial business for his own account, which is not lawful in accordance with the provisions of articles 136, 137, and 138.
6. When a partner who is under the obligation to render personal services to the copartnership absents himself, after having been requested to return and comply with his duties, and does not do so or does not give a good reason which temporarily prevents him from returning.
7. When one or more partners do not comply, in any manner whatsoever, with the obligations imposed in the articles of copartnership.

With regard to number 5, see the articles referred to; and with regard to the whole of this article see the regulations for the organization and management of commercial registries.

ART. 219. The partial rescission of the copartnership will produce the annulment of the articles in so far as the responsible partner is concerned, who shall be considered as excluded therefrom, requiring him to pay the amount of the loss which may correspond to him,

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should there be any, and the copartnership shall be authorized to retain, without allowing him to participate in the profits nor giving him any indemnification, the funds he may have contributed to the common capital, until all the transactions pending at the time of the rescission have been concluded and liquidated.

ART. 220. The liability of the partner excluded as well as that of the copartnership for all acts and obligations contracted in the name and for the account of the latter, with regard to third persons, shall continue until the record of the partial rescission of the articles of copartnership has been made in the commercial registry.

According to number 6 of article 38 of the registry regulations, it is the obligation of associations to record their partial rescission, as well as their complete dissolution, except when said dissolution takes place on account of the termination of the period for which it was established, in which case said record is optional.

The supreme court laid down, in an opinion of March 23, 1885, that the dissolution of a copartnership by the will of the partners which is not entered in the registry can not prejudice third persons.

ART. 221. Associations of any kind whatsoever shall be completely dissolved for the following reasons:

1. The termination of the period fixed in the articles of association or the conclusion of the enterprise which constitutes its purpose.
2. The entire loss of the capital.
3. The failure of the association.

Observe articles 223 and 226 of this code.

ART. 222. General and limited copartnerships shall furthermore be totally dissolved for the following reasons:

1. The death of one of the general partners if the articles of copartnership do not contain an express agreement that the heirs of the deceased partner are to continue in the copartnership, or an agreement to the effect that said copartnership will continue between the surviving partners.
2. The insanity of a managing partner or any other cause which renders him incapable of administering his property.
3. The failure of any of the general partners.

ART. 223. Commercial associations shall not be considered as extended by the implied or presumed will of the members after the period for which they were constituted has elapsed; and if the members desire to continue in association they shall draw up new articles, subject to all the formalities prescribed for their establishment, according to the provisions of article 119.

ART. 224. In general or limited copartnerships, established for an indefinite period, if any of the partners requests its dissolution, the other partners can not oppose it except for reasons of bad faith on the part of the person suggesting it.

It shall be understood that a partner acts in bad faith with regard to the dissolution of the copartnership when he would thereby derive a private profit which he would not receive should the copartnership continue.

ART. 225. A member who retires from a partnership on his own accord or who suggests its dissolution can not prevent pending transactions to be concluded in the manner most convenient to the common

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interests, and until said transactions are concluded the division of the property and goods of the copartnership shall not take place.

The supreme court in an opinion of May 8, 1861, declared: That although law 11, title 10, *Partida* 5, establishes that a partner may retire from a copartnership without his copartners having the right to prevent him from doing so, even though he retires before the termination of the transaction, or before the time agreed upon, he is liable to the copartnership for any loss or damage which may arise by reason of his unseasonable retirement.

ART. 226. The dissolution of a commercial association, which proceeds from any other cause but the termination of the period for which it was constituted, shall not cause any prejudice to third parties until it has been recorded in the commercial registry.

See article 38, No. 6, of the regulations for the organization and government of the commercial registry.

ART. 227. In the liquidation and division of the common capital the rules established in the articles of association shall be observed, and should there be none, the rules contained in the following articles.

There can not be enforced against an association to which another one has been joined an obligation contracted by the latter long before the fusion took place, and the foregoing article can not be considered as violated thereby. (Opinion of June 21, 1889.)

ART. 228. From the time an association is declared in liquidation the representation of the managing members to make new contracts and obligations shall cease, their powers being limited as liquidators to collecting the credits of the association, to extinguishing the obligations previously contracted as they fall due, and to realizing pending transactions.

The manager of an association in liquidation has the right to demand the fulfillment of the obligations contracted in favor of the same prior to the dissolution. (Opinion of October 12, 1888.)

ART. 229. In general or limited copartnerships, should there be no opposition on the part of any of the partners, the persons who managed the common funds shall continue in charge of the liquidation; but should all the partners not agree thereto a general meeting shall be called without delay, and the decision adopted at the same shall be enforced with regard to the appointment of liquidators from among the members of the association or not, as well as in all that refers to the form and proceedings of the liquidation and the management of the common funds.

Although articles of association by their nature require the corresponding liquidation, which must be made at the proper time in order to determine the rights and liabilities of the members, said liquidation must be made by the member who conducted the administration or management, he being the person who can give an account of the management and of the result of the business transacted. (Opinion of October 3, 1894, *Gacetas* of December 12 and 13.)

ART. 230. Under the penalty of removal the liquidators shall—

1. Draw up and communicate to the members, within the period of twenty days, an inventory of the common property, with a balance of the association in liquidation, according to its books.

2. Communicate in the same manner to the members every month the condition of the liquidation.

ART. 231. The liquidators shall be liable to the members for any loss suffered by the common funds on account of fraud or serious

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negligence in the discharge of their duty, but are not understood hereby as being authorized to transact business nor to compromise the common interests, unless the members have expressly granted them these privileges.

ART. 232. At the conclusion of the liquidation and when the time has come to make the division of the common funds, according to the classification made by the liquidators, or by the meeting of members, which any of whom can request to be held for this purpose, said liquidators shall make the division within the period decided by the meeting.

ART. 233. If any of the members considers himself unjustly treated in the division made, he may make use of his right before the judge or court of competent jurisdiction.

ART. 234. In the liquidation of commercial associations in which minors or incapacitated persons are interested, the father, mother, or guardian of the latter shall act, as may be the case, with full powers, as though a private transaction were involved, and all the proceedings instituted and consented to by said representatives for their principals shall be valid and irrevocable without privilege of restitution and without prejudice to the liability the former may contract with regard to the latter by reason of their carelessness or negligence.

ART. 235. No member can demand the delivery to him of the capital due him from the common funds until all the debts and obligations of the association have been extinguished, or until the amount thereof has been deposited, if the delivery can not at once take place.

An opinion of the said court of March 23, 1885, establishes: That when an association contracts the obligation to pay a certain salary to one of its employees and the former is afterwards dissolved by the will of the members, the association in liquidation is bound to pay said employee his salary until he is notified of the dissolution, as well as interest for the delay in making the payment at the time stipulated.

The opinion which orders that, in accordance with what has been agreed upon, the losses and profits must be distributed when an association is dissolved, does not violate the provisions of the foregoing article. (Opinion of February 12, 1889.)

ART. 236. There shall be deducted from the first divisions made among the members the sums they may have received for personal expenses or which have been advanced them by the company for any other reason whatsoever.

ART. 237. The private property of the general partners which is not included in the assets of the copartnership when it is established can not be seized for the payment of the obligations contracted by the copartnership until after the common assets have been attached.

ART. 238. In corporations in liquidation, the provisions of their by-laws shall continue to be observed in so far as ordinary or extraordinary general meetings are concerned, as well as with relation to the accounts to be given of the progress of the liquidation, and to resolve upon what may be advisable for the common interests.

TITLE II.—JOINT ACCOUNTS.

ART. 239. Merchants may have an interest in the transactions of other merchants, contributing thereto the amount of capital they may agree upon, and participating in the favorable or unfavorable results of said transactions in the proportion which may be fixed.

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The doctrine established by the supreme court in an opinion of January 20, 1865, is applicable to the contents of this article, in which there is stated: The provisions of the code of commerce relating to commercial associations are not applicable to this association, and which provisions establish the manner in which they are to be constituted, the results and obligations they produce, as well as their life, liquidation, etc. And in other opinions of December 7 and 9, 1871, and December 12, 1866: That when an association is established allowing a third person to participate therein, and there are no common agreements between themselves, and no fund by shares is created, which are the characteristics of commercial associations, said association can only be called a joint account association.

According to an opinion of July 11, 1888, an agreement in which one of the contracting parties only contributes capital, and in which there is no manager to direct in his own name and under his own liability the negotiations, can not be called a contract for joint accounts.

ART. 240. Joint accounts shall not be subject, with regard to their formation, to any formality, and may be privately contracted by word or in writing, and their existence may be proved by any of the means accepted in law, in accordance with the provisions of article 51.

With regard to this point, the supreme court established, in an opinion of December 9, 1871, and in others, that although joint accounts are not subject to a fixed form (by word or in writing) it should not be construed to the effect that the other legal rules and provisions proper to the nature of said contracts, and which fix the relations of the members to each other as well as the duties of the latter with regard to the management of the common interests, are not applicable to the same.

ART. 241. In the transactions treated of in the two foregoing articles, no commercial name common to all the participants can be adopted, nor can any further direct credit be made use of except that of the merchant who transacts the business and who manages in his own name and under his individual liability.

ART. 242. Persons transacting business with the merchant carrying on the joint business shall only have a right of action against the latter and not against the other persons interested, and the latter, on the other hand, shall have no right of action against the third person who made the transaction with the manager unless said manager formally cedes his right to them.

ART. 243. The liquidation shall be effected by the manager, and after the transactions have been concluded he shall render a proper account of its results.

In an opinion of December 20, 1882, the supreme court established: That in associations on joint account the person managing the same is the person who is to render the accounts.

TITLE III.—COMMERCIAL COMMISSIONS.

SECTION FIRST.—*Agents.*

ART. 244. As a commercial commission shall be considered that which involves a commercial act or transaction and in which the principal or the agent is a merchant or commercial broker.

According to an opinion of the supreme court of June 14, 1882, there can not be considered as an act of commercial commission the charge or commission accepted by a person for the sale of the crops of the owner for the account, order, and risk of the same.

ART. 245. The agent may discharge the commission, acting in his own name or in that of the principal.

In an opinion of September 21, 1869, the supreme court established that in order to transact commercial business for account in the capacity of agent a

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power of attorney contained in a solemn instrument is not necessary, but it is sufficient to have received the commission in writing or by word, although in the latter case it will be necessary to ratify it in writing, according to an opinion of January 17, 1873.

ART. 246. When the agent transacts business in his own name, it shall not be necessary for him to state who is the principal and he shall be directly liable, as if the business were for his own account, to the persons with whom he transacts the same, said persons not having any right of action against the principal, nor the latter against the former, the liabilities of the principal and of the agent to each other always being reserved.

See article 2127 of the law of civil procedure.

The principal may, according to an opinion of the supreme court of October 5, 1881, avoid the obligations imposed on principals by the code of commerce.

The same court, in an opinion of June 30, 1883, stated: That persons transacting business with an agent do not acquire any right of action against the principal for the obligations which said agent contracted in his own name, and that when the agent does not act in his own name the principal has a right of action against the persons with whom the former transacted the business intrusted to him, an assignment to him by the said agent not being necessary.

ART. 247. If the agent transacts business in the name of the principal, he must state that fact; and if the contract is in writing, he must state it therein or in the subscribing clause, giving the name, surname, and domicile of said principal.

In the case of prescribed in the foregoing article, the contract and the actions arising therefrom shall be effective between the principal and the person or persons who may have transacted business with the agent; but the latter shall be liable to the persons with whom he transacted business during the time he does not prove the commission, if the principal should deny it, without prejudice to the obligation and proper actions between the principal and agent.

ART. 248. In case an agent should refuse the commission intrusted to him, he shall be obliged to communicate his decision to the principal by the quickest means possible, being required in any case to confirm it by the first mail after receiving the commission.

He shall also be obliged to exercise due care in the custody and preservation of the merchandise which the principal may have forwarded to him until the latter appoints a new agent, in view of his refusal, or until, without awaiting a new designation, the judge or court has taken possession of the goods at the request of the agent.

The noncompliance with any of the obligations established in the two foregoing paragraphs shall cause the agent to incur the liability of indemnifying the principal for the loss and damages which may arise.

See, further on, article 623, and also article 2119 of the law of civil procedure for the Peninsula, 2080 of that for Cuba and Porto Rico, and 2040 of that for the Philippines.

ART. 249. The commission shall be understood as accepted whenever the agent takes any action in the discharge of the commission intrusted to him by the principal which is not limited to the action mentioned in the second paragraph of the foregoing article.

For the application of this article, note the provisions of article 252, which is closely related thereto.

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ART. 250. The discharge of commissions requiring the disbursement of funds shall not be compulsory, even though they have been accepted, until the principal places the sum necessary for the purpose at the disposal of the agent.

The agent may also suspend the taking of further action with regard to the commission intrusted to him when, after having made use of the sum received, the principal should refuse to forward the further funds requested by the former.

ART. 251. If an agreement has been made to advance the funds necessary for the discharge of the commission, the agent shall be obliged to supply them, except in the case of the suspension of payments or bankruptcy of the principal.

ART. 252. The agent who, without legal cause, does not fulfill the commission accepted or the discharge of which he has begun to carry out, shall be liable for all the damages the principal may suffer by virtue thereof.

ART. 253. After a contract has been made by the agent with all the legal formalities, the principal must accept all the consequences of the commission, reserving the right of action against the agent by reason of error or omission committed in its fulfillment.

ART. 254. The agent who, in the discharge of his commission acts in accordance with the instructions received from the principal, shall be exempted from all liability to the same.

With regard to this point, in an opinion of November 27, 1867, the supreme court stated: That even though an agent be empowered to act in the manner he may deem most convenient, he shall not thereby be relieved of the duty of giving to his principal, in the manner agreed upon or possible, notice of the conditions or circumstances which influence his decision, in order that the former may ratify the authorization and give him new instructions with full informaton. In another opinion of June 3, 1870: That an agent must submit to the instructions he receives from the principal, and thus shall not incur liability, and therefore if an agent does not receive an express order to deliver certain goods before a declaration of suspension of payments he does not incur liability.

The same court, in opinions of June 8, 1870, May 27, 1871, and December 27, 1875, declared: That all the acts executed by an agent personally or through his correspondents must be in accordance with the instructions received from the principal, and if he acts in this manner he shall be exempted from all liability for the accidents and results which may arise in the transaction.

ART. 255. In so far as matters not expressly foreseen and provided for by the principal are concerned, the agent shall consult him, provided this is permitted by the nature of the business.

But should said agent be authorized to proceed according to his judgment, or the consultation be not possible, he shall proceed with prudence and in accordance with commercial customs, acting in the business as if it were his own. Should an unforeseen accident make the execution of the instructions received hazardous or prejudicial, in the judgment of the agent, he may suspend the fulfillment of the commission, communicating the reasons for his action to the principal by the speediest means of communication.

ART. 256. In no case shall the agent proceed against an express order of the principal, being liable for all the losses and damages he may occasion by reason thereof.

Similar liability shall be incurred by an agent in cases of malice or of abandonment.

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ART. 257. An agent shall always be liable for the cash he may have in his hands by reason of the commission.

ART. 258. An agent who, without express authorization of the principal, should transact some business at prices or conditions which are more onerous than the current market rates on the date on which it took place, shall be liable to the principal for the loss he may have caused him thereby, the statement that he made transactions at the same time for his own account under similar circumstances not being admissible as an excuse.

ART. 259. An agent must observe the provisions contained in the laws and regulations with regard to the transaction which has been intrusted to him, and shall be liable for the results of their violation or omission. If he acted in virtue of the express order of the principal, the liabilities which may arise shall be incurred by both conjointly.

ART. 260. The agent shall frequently communicate to the principal the information which may be of importance to a successful result of the transaction, informing him of the contracts he may have executed by the mail of the same or of the next day on which they took place.

ART. 261. The agent shall personally discharge the commissions he may receive, and can not delegate them without the prior consent of the principal unless he has been previously authorized to make the delegation; but he may under his liability make use of his employees in the routine transactions which, according to general commercial customs, are intrusted to the same.

ART. 262. If the agent should have made a delegation or substitution with the authority of the principal he shall be liable for the acts of the substitute, if the person to whom the business was delegated was selected by him, being otherwise released from liability.

ART. 263. An agent is required to render, in accordance with his books, a specific and proper account of the amounts he received for the commission, returning to the principal, at the time and in the manner prescribed by him, the surplus which appears in his favor.

In case of tardiness he shall pay the legal rate of interest.

The loss of surplus funds shall be suffered by the principal, provided the agent has observed the instructions of the former with regard to their return.

ART. 264. An agent who, having received funds to discharge a commission, invests them in or uses them for a purpose other than that of the commission, shall pay the constituent the principal and its legal interest, and shall be liable from the date on which he received the same, for the loss and damage caused by reason of noncompliance with the commission, without prejudice to the criminal action which may be proper.

In accordance with article 548, case number 5 of the penal code of 1870, persons who appropriate or divert money, goods, or any other personal property they may have received on deposit, commission, etc., are guilty of fraud.

ART. 265. The agent shall be liable for the goods and merchandise he may receive, in the terms and with the conditions and descriptions he has been informed of in the consignment, unless he proves, in receiving the same, the averages and deterioration it has suffered, comparing its condition with the contents of the bill of lading or charter or of the instructions received from the principal.

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With regard to the manner of proving the averages or deterioration referred to in the above article, see the provisions of the law of civil procedure (article 2127 of that for the Peninsula, 2088 of that for Cuba and Porto Rico, and 2048 of that for the Philippines).

ART. 266. An agent who has in his possession merchandise or goods for the account of another person, shall be liable for their preservation in the condition in which he received the same. This liability shall cease when their destruction or impairment is due to accidental cases, force majeure, lapse of time, or by a defect in the article.

In cases of total or partial loss on account of lapse of time or defect in the article, the agent shall be obliged to prove the impairment of the merchandise in a legal manner, informing the principal thereof as soon as it is observed.

See the articles of the law of civil procedure referred to in the foregoing addition.

ART. 267. No agent shall purchase for himself nor for another person what has been given him to sell, nor shall he sell what he has been requested to purchase, without the permission of the principal.

He shall furthermore not be permitted to change the marks on the goods he may have purchased or sold for the account of another.

According to an opinion of January 14, 1888, the marks placed on merchandise which remains in the possession of the seller are an explanatory sign of what has been agreed to and which determines the manner in which the article has been acquired by the seller.

ART. 268. Agents can not handle goods of the same kind belonging to different parties, bearing the same mark, without distinguishing them by a countermark, in order to avoid confusion and for the purpose of designating the respective property of each principal.

ART. 269. If the goods intrusted to an agent should suffer some change, making their sale urgent in order to save as much as possible of their value, and the haste were such that there is no time to advise the principal and await his orders, the agent shall apply to the judge or court of competent jurisdiction, who shall authorize the sale with the formalities and precautions he may consider most beneficial to the principal.

With reference to a better understanding and application, in a proper case, of the foregoing article, see rule 1 of article 809, articles 810, 850, et seq., of this code, and article 2161 of the law of civil procedure in force in the Peninsula, 2122 of the same code amended for Cuba and Porto Rico, and 2088 of that for the Philippines.

ART. 270. An agent can not, without authority from the principal, loan or sell on credit or on time, the principal being permitted in such cases to require cash payment of the agent, leaving him any interest, profit, or advantage which may arise from said credit on time.

ART. 271. If an agent, with the due authorization, sells on time, he must so state it in the account or in the communication to the principal, informing him of the names of the purchasers; and should he not do so, the sale shall be considered as made for cash, in so far as the principal is concerned.

ART. 272. If an agent receives for a sale besides the ordinary commission a commission called a guaranty commission, the risks of the collection shall be for his account, being obliged to pay the principal

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the products of the sale at the same periods as agreed upon with the purchaser.

ART. 273. An agent who does not make the collection of the credits of his principal at the period they are demandable, shall be liable for the losses arising from his omission or delay unless he proves that he at the proper time made use of the legal remedies to recover the payment.

ART. 274. An agent who is intrusted with the expedition of merchandise, and who has received orders to insure the same, shall be liable, should he not do so, for the damage said merchandise may suffer, provided the funds necessary for the payment of the premium have been furnished, or provided he has obligated himself to advance them and should not have immediately advised the principal of his impossibility to do so.

If during the risk the underwriter is a declared bankrupt it shall be the duty of the agent to renew the insurance, unless the principal has given him orders to the contrary.

ART. 275. An agent who as such is to forward merchandise to another point, shall make the transportation contract, complying with the obligations which are imposed on shippers in land and maritime transportations.

Should he make the contract for transportation in his own name when he is acting for another, he shall be liable to the carrier for all the obligations imposed on shippers in land and maritime transportations.

ART. 276. Merchandise forwarded on consignment shall be understood as specially bound to the payment of the commission fees, advances, and expenses he may have made on account of its value or proceeds.

As a consequence of this obligation:

1. No agent can be dispossessed of the merchandise he receives on consignment until he is previously reimbursed for his advances, expenses, and commission charges.

2. The agent must be paid from the proceeds of said merchandise, or must be preferred over the other creditors of the principal, with the exception of the provisions of article 375.

In order to enjoy the preference mentioned in this article, it shall be a necessary condition that the merchandise be in the possession of the consignee or agent, or that it is at his disposal in a public store or warehouse, or that the shipment was made consigned to his name, the bill of lading, stub, or transportation contract having been received signed by the carrier.

In confirming the precept of the foregoing article, the supreme court, in an opinion of July 9, 1881, declared: That an agent has a preferred right in the collection of his expenses, commission, and advances before any other creditor, but in no case before the owner of the merchandise not paid for, who exercises his right of ownership.

ART. 277. The principal shall be obliged to pay the agent the commission premium, unless there is an agreement to the contrary.

Should there be no agreement with regard to the brokerage, the latter shall be fixed in accordance with the commercial practices and customs of the market where the commission is fulfilled.

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ART. 278. The principal shall furthermore be obliged to pay the agent cash, after receiving a proper account, for his expenses and disbursements, with legal interest from the day they took place until they have been fully repaid.

According to an opinion of the supreme court of June 18, 1857, there is due the agent, according to note No. 4, title 3, book 9 of the "Novisima Recopilación," the value, exchange, reexchange, interest, and other expenses connected with bills of exchange; and in accordance with another opinion of February 26, 1881, the fact that a principal is not bound by the acts of the agent outside of the authorization granted him does not deserve the appellation of legal doctrine in commercial matters.

ART. 279. The principal may revoke the commission intrusted to an agent at any stage of the transaction, advising him thereof, but always being liable for the result of the transactions which took place before the latter was informed of the revocation.

Although the provisions of articles 279 and 291 authorized a principal to revoke the power given an agent, provided he informed the latter thereof, the former being liable for the result of the transaction which took place before making known the revocation, in order that the latter may have its legal effects the provisions of article 21, No. 6, articles 29 and 290 of said code must be complied with. (Opinion of February 13, 1895. *Gaceta* of June 22.)

ART. 280. A contract shall be rescinded by the death of the agent or by his incapacity; but it shall not be rescinded by the death or incapacity of the principal, although it may be revoked by his representatives.

SECTION SECOND.—*Other forms of commercial commissions—Factors, employees, and shop clerks.*

ART. 281. A merchant may constitute general or special attorneys or agents for the purpose of transacting business in his name and for his account in whole or in part, or for the purpose of assisting him therein.

According to doctrine established by the supreme court in an opinion of November 9, 1877, the articles of the code of commerce are not applicable to the relations between the Bank of Spain and the director of one of its branches, because such officials can not be called factors.

ART. 282. A factor must have the qualifications necessary to obligate himself in accordance with this code, and a power of attorney from the person in whose name he transacts the business.

The power of attorney referred to in the above article, which must appear in a public instrument in order that it may be effective against third persons, must be recorded in the commercial registry in accordance with the provisions of number 6, of article 21 of this code, and of articles 31 and No. 2 of article 38 of the regulations for the organization and management of said registry.

ART. 283. The manager of an enterprise or manufacturing or commercial establishment for the account of another, authorized to administer it, direct it, and to transact business relating thereto, with more or less powers, as the owner may have considered advisable, shall have the legal qualifications of a factor, and the provisions contained in this section shall be applicable to him.

The supreme court established, in an opinion of October 16, 1861, that a commercial factor authorized by a general power of attorney has powers in all that relates to the branch of commerce he is engaged in, with the exception of any limitations,

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ART. 284. The factors shall transact business and make contracts in the names of their principals, and in all instruments which they subscribe as such they shall state that they do so by virtue of a power of attorney or in the name of the person or association they represent.

Factors, according to an opinion of the supreme court of October 28, 1867, in transacting business or making contracts in the name of their principals and in business belonging to the same, must state in the instruments they subcribe that they do so by virtue of a power of attorney from the persons they represent, and even though they do not state this fact, it must be understood that contracts made by the former are for the account of the principal, and that therefore the obligations are incurred by the latter, if said contracts involved objects corresponding to the business or traffic of the establishment.

ART. 285. When factors transact business in the manner prescribed in the foregoing article, the obligations they may contract shall be incurred by the principals.

Any claim to compel them to fulfill said obligations shall be brought against the property of the principal's establishment or enterprise and not against the property of the factors, unless it is confounded with that of the former.

According to the contents of an opinion of October 5, 1881, a principal can not exempt himself from the obligations imposed upon him by the contracts made by the factor, when the latter acts within the scope of the privileges granted him by the power of attorney and in questions proper to the business intrusted to him.

ART. 286. Contracts made by the factor of a manufacturing or commercial establishment or enterprise, when it is common knowledge that he belongs to a well-known enterprise or association, shall be understood as made for the account of the owner of said enterprise or association, even though the factor did not mention this fact at the time of making the contract; or that breach of trust, transgression of powers, or appropriation of the goods, which are the subject of the contract is alleged, provided these contracts involve objects included in the transactions or business of the establishment, or if, not being of this kind, it should be proven that the factor acted according to orders from his principal, or that the latter approved his action in express terms or by positive acts.

ART. 287. A contract made by a factor in his own name shall bind him directly with the person with whom it was made; but if the transaction was made for the account of the principal, the other contracting party may bring his action against the factor or against the principal.

ART. 288. Factors can not transact business for their own account, nor interest themselves in their own name or in that of another person, in negotiations of the same character as those they are engaged in for their principals, unless the latter expressly authorize them thereto.

Should they negotiate without this authorization, the profits of the negotiation shall be for the principal and the losses for the account of the factor.

If the principal has granted the factor authorization to make transactions for his own account or in union with other persons, the former shall not be entitled to the profits, nor shall he participate in the losses which may be suffered.

If the principal has permitted the factor to take part in some transaction, the participation of the latter in the profits shall be, unless

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there is an agreement to the contrary, in proportion to the capital he may have contributed; and should he not have contributed any capital, he shall be considered a working partner.

ART. 289. The fines which a factor may incur by reason of violations of the fiscal laws and regulations of the public administration in his management as factor shall be immediately enforced against the property he manages, without prejudice to the right of the principal against the factor for his guilt in the acts which gave rise to the fine.

ART. 290. The powers of attorney granted a factor shall be considered in force until they are expressly revoked, notwithstanding the death of the principal or of the person from whom they were received in due form.

ART. 291. The acts and contracts made by the factor shall be valid with regard to his constituent, provided they are prior to the time the former is informed by legitimate means of the revocation of the powers of attorney or of the alienation of the establishment.

They shall also be valid with regard to third persons, until the provisions of number 6 of article 21 have been fulfilled, with regard to the revocation of the powers of attorney.

Article 31 and No. 2 of article 38 of the commercial registry regulations, as well as No. 6 of the article referred to, supplement the provisions of this article.

See the doctrine of the opinion of February 13, 1895, in the addition to article 279.

ART. 292. Merchants may intrust to other persons besides the factors the constant management, in their name and for their account, of one or more of the branches of the business they are engaged in by virtue of a written or verbal agreement, associations including such agreements in their by-laws, and private parties making them known by public notices or by means of circulars to their correspondents.

The acts of these special employees or agents shall only bind the principal with regard to the transactions proper to the branch of business which has been intrusted to them.

ART. 293. The provisions of the foregoing article shall also be applicable to commercial shop clerks who are authorized to manage a commercial transaction or some branch of the business of their principal.

ART. 294. Shop clerks intrusted with selling at retail in a public store shall be considered authorized to collect the amounts of the sales they may effect, and their receipts shall be valid, being issued in the name of the principals.

The same power shall be enjoyed by shop clerks who sell in wholesale stores, provided the sales are for cash and that the payment therefor is made in the said store; but when the collections are to be made outside of the same, or when they proceed from sales made on time, the receipts must necessarily be signed by the principals or by their factors, or by an agent legally authorized to make collections.

ART. 295. When a merchant intrusts a shop clerk with the receipt of merchandise and the latter receives it without making any remarks with regard to its quantity or quality, its reception shall have the same effects as though received by the principal.

ART. 296. Without the consent of their principals, neither factors nor shop clerks of commerce may delegate to others the commissions they receive from the former; and should they do so without

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said consent, they shall be directly responsible for the actions of the substitutes and for the obligations contracted by the latter.

ART. 297. Factors and shop clerks of commerce shall be liable to their principals for any damage they may cause their interests by reason of having proceeded in the discharge of their duties with malice, negligence, or violation of the orders or instructions they may have received.

ART. 298. If, by reason of the service he is rendering, a shop clerk of commerce should incur some extraordinary expense or should suffer some loss regarding which there was no express agreement between him and his principal, the latter shall be the one to indemnify him for the loss suffered.

ART. 299. If the contracts between the merchants and their shop clerks and employees should have been made for a fixed period, none of the contracting parties shall be allowed to violate the terms of the contract until the termination of the period agreed upon.

Persons violating this clause shall be subject to indemnify the loss and damage suffered, with the exception of the provisions contained in the following articles.

The text of this article amended for the Philippine Islands, as published in the *Gaceta de Madrid*, states *in the following article.*

According to an opinion of the supreme court of April 26, 1871, contracts between shop clerks and their principals must be governed by the agreements between the contracting parties, and only by the provisions of articles 197 et seq. of the code of commerce (article 299 of this code) when there is no express stipulation with regard to the point in controversy.

ART. 300. The following shall be special reasons for which principals may discharge their employees, even though the time of service of the contract has not elapsed:

1. Fraud or breach of trust in the business intrusted to them.
2. The transaction of some commercial business for their own account without the express knowledge and consent and permission of the principal.
3. Serious disrespect and lack of consideration to said principal or to members of his family or establishment.

ART. 301. The following shall be reasons for which employees may leave the service of their principals, even though the time of their contract of service has not elapsed:

1. Nonpayment of the salary or remuneration agreed upon at the times fixed.
2. Noncompliance with any of the other conditions agreed upon in favor of the employee.
3. Bad treatment or serious offenses on the part of the principal.

ART. 302. In cases in which no special time is fixed in the contracts of service, any one of the parties thereto may dissolve it, advising the other party thereof one month in advance.

The factor or shop clerk shall be entitled, in such case, to the salary due for said month.

TITLE IV.—COMMERCIAL DEPOSITS.

ART. 303. In order that a deposit may be considered commercial, it is necessary—

1. That the depositor, at least, be a merchant.
2. That the wares deposited be commercial objects.

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3. That the deposit constitute in itself a commercial transaction, or be made by reason of commercial transactions.

See articles 193 et seq. and their respective additions.

The opinion of the supreme court of March 4, 1881, confirming in part the provisions of number 3 of this article, established: That a deposit can not be considered a commercial deposit the object of which is not a commercial transaction, and therefore commercial provisions are not applicable thereto.

ART. 304. The depositary shall have a right to demand compensation for the deposit, unless there is an express agreement to the contrary.

If the contracting parties have not fixed the amount of the compensation, it shall be determined according to the current rates in the locality where the deposit was made.

ART. 305. The deposit shall be consummated by the delivery to the depositary of the article in question.

ART. 306. The depositary is obliged to preserve the article deposited in the manner he receives it, and return it with its increase, should there be any, when the depositor requests it of him.

In the preservation of the deposit the depositary shall be liable for the injury and damage the articles deposited may suffer by reason of his malice or negligence, and also for those arising from the nature or defects of the articles, if he should not in the latter cases personally have done all that was possible in order to avoid or remedy them, furthermore notifying the depositor immediately upon their appearing.

ART. 307. When the deposits consist of cash with a specification of the currency constituting the same, or when they are delivered, sealed, or closed, the increase or reduction in value suffered by the same shall be for the account of the depositor.

The risks of such deposits shall be run by the depositary, and he shall also be liable for any injury they may suffer unless he proves that they were caused by force majeure or by an insurmountable accidental case.

When the deposits of cash are made without a specification of the currency or without being closed or sealed, the depositary shall be liable for its preservation and risks in the manner established in the second paragraph of article 306.

ART. 308. The depositaries of bonds, securities, certificates, or instruments which earn interest are obliged to collect the same when they fall due, as well as to take the steps necessary in order that the securities deposited may preserve their value and the rights corresponding to the same according to legal provisions.

ART. 309. Whenever, with the consent of the depositor, the depositary disposes of the articles on deposit either for himself or for his business, or for transactions intrusted to him by the former, the rights and obligations of the depositary and of the depositor shall cease, and the rules and provisions applicable to the commercial loans, commission, or contract which took the place of the deposit shall be observed.

A person receiving articles on deposit which can be counted, such as notes of the Spanish Bank of Habana (Banco Español de la Habana) are obliged to return the same or a similar number, and should this not be possible the value of the same at the time they are to be returned, in accordance with laws 2, title 3, and 3 and 8, title 1, *Partida* 5, with the doctrine of which the article we annotate and article 312 of this code are in harmony. (Opinion of July 9, 1889.)

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ART. 310. Notwithstanding the provisions of the foregoing articles, deposits made with banks, with general warehouses, with loan or any other associations, shall be governed in the first place by the by-laws of the same, in the second by the provisions of this code, and finally by the rules of common law, which are applicable to all deposits.

TITLE V.—COMMERCIAL LOANS.

SECTION FIRST.—*Commercial loans.*

ART. 311. A loan shall be considered commercial when the following conditions are present:

1. That one of the contracting parties is a merchant.
2. If the articles loaned are destined to commercial transactions.

ART. 312. If the loan consists of money, the debtor shall pay it by returning an amount equal to that received, in accordance with the legal value the money may have at the time of the return, unless there was an agreement with regard to the kind of money in which the payment was to be made, in which case the fluctuations in value shall be lost or taken advantage of by the lender.

In loans of bonds or securities the debtor shall pay by returning the same number of the same kind and same conditions, or their equivalents if the former have been done away with, unless there is an agreement to the contrary.

If the loans are in kind the debtor must return, unless there is an agreement to the contrary, a similar amount in the same kind and quality, or its equivalent in cash if the kind due should be done away with.

See the note to article 309 of this code.

ART. 313. In loans for an indefinite period, or in which no due time has been fixed, payment can not be demanded of the debtor until thirty days have elapsed, to be counted from the date of the notarial demand which may have been made.

ART. 314. Loans shall not pay any interest unless there is an agreement to that effect in writing.

Similar provisions are in force with regard to loans according to the civil law.

ART. 315. The interest of the loan may be agreed upon without any established rate or limitation whatsoever.

Any agreement made in favor of the creditor shall be considered as interest.

The provisions of this article have conformed this code with the law which prescribes the abolition of an established rate of interest.

ART. 316. Debtors who delay the payment of their debts after the same have fallen due, must pay, from the day following that on which it became due, the interest agreed upon in such case, or in the absence of such agreement, the legal interest.

If the loan is in kind, in order to compute the interest, its value shall be graduated by the prices of the merchandise loaned in the locality in which the return is to be made, on the day following that on which it falls due, or by the value fixed by experts if the merchandise should no longer exist at the time its appraisement is to be made.

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And if the loan consists of bonds or securities, the interest, by reason of delay in repayment, shall be that earned by said securities or bonds, or in the absence thereof, the legal rate of interest, the value of the securities being determined by their price on exchange, if they are subject to quotation, or at their current prices on the day following that on which they fall due.

According to an opinion of the supreme court of January 18, 1881, the effects of delay in the fulfillment of commercial obligations do not commence until the creditor institutes judicial proceedings against the debtor, or requests payment through a notary or other public official.

ART. 317. Interest which has fallen due and has not been paid shall not earn interest. The contracting parties may, however, capitalize the net interest which has not been paid, which, as new principal, shall earn interest.

ART. 318. The receipt of the principal by the creditor without an express reserve of the right to the interest agreed upon or due shall extinguish the obligation of the debtor with regard to the same.

Payments on account, when there is no express stipulation with regard to their application, shall first be applied to the payment of interest as it falls due and then to the principal.

ART. 319. After an action has been brought the accrued interest can not be added to the principal for the purpose of demanding greater interest.

SECTION SECOND.—*Loans guaranteed by public bonds or securities.*

ART. 320. A loan with a guaranty of securities quoted on exchange, contained in an instrument with the intermediation of licensed agents, shall always be considered commercial.

The lender shall have, on the public bonds or securities pledged in accordance with the provisions of this section, a right to collect his credit with preference over other creditors, who can not remove said securities from his possession unless they satisfy the loan made on the same.

The supreme court, in an opinion of July 11, 1881, stated: That loans guaranteed by public securities are exchange transactions, which are made with the intermediation of stockbrokers, although the law does not require that this kind of transactions take place or be published in the building of the exchange; and in another opinion, of October 15, 1874: That in a loan with a security the creditor may hold the latter, when they are public or commercial securities rated by a broker, without making an agreement due on a day certain.

See article 918 of this code.

The instruments constituting loans guaranteed by public bonds or securities must necessarily be executed on the stamped instruments issued for the purpose by the State. There are excepted therefrom, however, instruments for loans employed by pawnshops, banks, and associations legally established, who previously request it of the provincial offices of the respective treasury, which may be stamped on the special forms which they may present.

The scale governing the amount of the stamp in these cases see in article 21 of the law in force of September 15, 1892.

See the addition to the following article.

ART. 321. The rights of preference, treated of in the foregoing article, shall only be had on the same securities which constituted the guaranty; for which purpose, if said guaranty consisted of instruments payable to bearer, their numbers shall be stated in the instrument constituting the contract, and if it consists of stock or transferable securities, the transfer shall be made to the lender, stat-

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ing in the instrument, besides the circumstances necessary to prove the identity of the guaranty, that the transfer does not include the conveyance of ownership.

The preference treated of in this article, as well as in the foregoing one, can only be legally made use of by the holders of securities acquired after April 4, 1893, when they prove, with the exhibition of the corresponding instrument, that they have paid the tax established in the third paragraph, basis 2, of the law of June 30, 1892. Said impost consists of a tax of .10 per cent on the value of transfers of public securities, commercial and industrial bonds, merchandise, shares in mines, and personal loans which exceed 1,000 pesetas, those involving smaller amounts paying only .05 per cent of their value. (Royal decree of April 4, 1893. *Gaceta* of the 6th.)

ART. 322. At the will of the persons interested instead of the numeration of securities payable to bearer, they may be deposited in the public establishment determined in the exchange regulations.

Neither the public treasury nor the Bank of Spain and its branches can receive the securities referred to in the article we annotate and in article 37 of the general exchange regulations until it is first proved that the payment of the tax on property rights and transfer of property has been made. (Royal decree of April 4, 1893. *Gaceta* of the 6th.)

See article 37 of the exchange regulations in force.

ART. 323. After the period for which the loan was contracted has elapsed, the creditor, unless there was an agreement to the contrary, and without necessity of notifying the debtor, shall be authorized to request the alienation of the securities, for which purpose he shall present them, with the instrument constituting the loan, to the board of directors, which, after finding their numeration correct, shall convey them to the amount necessary through a licensed agent, on the same day if it be possible, and otherwise on the next.

A lender can only make use of the said right during the hours of the exchange of the day following that on which the debt fell due.

ART. 324. Securities which are quoted on exchange, payable to bearer, pledged in the manner fixed in the foregoing articles, shall not be subject to return until the lender has been reimbursed, without prejudice to the rights and actions of the dispossessed owner against the persons liable according to the laws, for the acts by virtue of which he has been deprived of the possession and ownership of the securities given as a guaranty.

TITLE VI.—PURCHASE AND SALE AND COMMERCIAL EXCHANGES AND TRANSFERS OF NONNEGOTIABLE CREDITS.

SECTION FIRST.—*Purchase and sale.*

ART. 325. A purchase and sale of personal property for the purpose of resale, either in the form purchased or in a different form, for the purpose of deriving profit in the resale, shall be considered commercial.

The importance which enterprises managed by private parties or by commercial associations have attained, the purpose of which is the purchase of land with the object of reselling it in small lots or after building thereon, purchases and sales which constitute true commercial transactions, is the reason why this code does not classify them as commercial or not, leaving the courts at liberty to classify them as either, in view of the circumstances.

The purchase of oil used for the purposes of manufacturing soap for sale is a commercial transaction.

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ART. 326. The following can not be considered commercial:

1. The purchase of goods destined for the consumption of the purchaser or of the person for whom they are bought.

2. Sales made by owners and by farmers or cattlemen of the fruits or products of their crops or cattle, or of the goods in which their rents are paid them.

3. Sales made by artificers in their workshops of the articles constructed or manufactured by them.

4. The resale made by any person who is not a merchant, of the remainder of the stock he laid in for his own consumption.

ART. 327. If the sale takes place by samples or by a fixed quality known in commerce, the purchaser can not refuse to receive the articles contracted for, if they are in accordance with the samples or quality mentioned in the contract.

In case the purchaser refuses to accept them, experts shall be appointed by both parties, who shall decide whether their reception is proper or not.

If the experts should declare that the articles are to be received, the sale shall be considered as consummated, and in a contrary case the contract shall be rescinded, without prejudice to the indemnification to which the purchaser may be entitled.

As a doctrine to be applied to contracts in general, the supreme court established in an opinion of July 7, 1883, that a contract of purchase and sale, being essentially mutual, is perfect and binding by the simple agreement of the contracting parties to the article and to the price. However, in order to apply this principle to commercial contracts, it shall be understood that the article is to be seen or be known by the purchaser, as prescribed in the following article:

ART. 328. In the purchase of goods which are not seen or can not be classified by a fixed quality and well known in commerce it shall be understood that the purchaser reserves the privilege of examining them and unrestrictedly rescinding the contract if the goods do not suit him.

The purchaser shall also be entitled to rescind said contract if he reserved the right by an express agreement to examine the goods contracted for.

ART. 329. If the vendor does not deliver the goods sold at the time stipulated, the purchaser may request the fulfillment or the rescission of the contract, with damages in either case for the loss he may have suffered by reason of the delay.

ART. 330. In contracts in which the delivery of a certain amount of merchandise is stipulated within a certain time, the purchaser shall not be obliged to receive part of said amount even on the promise of delivering the balance; but if he accepts the partial delivery the sale shall be consummated with regard to the goods received, reserving the right of the purchaser to demand for the rest the fulfillment of the contract or its rescission, in accordance with the foregoing article.

ART. 331. The loss or impairment of the goods before their delivery, on account of unforeseen accidents or without the fault of the vendor, shall entitle the purchaser to rescind the contract, unless the vendor has constituted himself the depositary of the merchandise, in accordance with article 339, in which case his liability shall be limited to that arising by reason of the deposit.

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ART. 332. If the purchaser refuses without just cause to receive the goods bought, the vendor may demand the fulfillment or rescission of the contract, depositing the merchandise in court in the first case.

The same judicial deposit may be made by the vendor whenever the purchaser delays in taking charge of the merchandise.

The expenses arising from the deposit shall be defrayed by the person who caused said deposit to be made.

With regard to the procedure to be observed for the deposit in court referred to in this article, see title 2 of the second part of book 3 of the law of civil procedure, articles 2119 et seq. of that for the Peninsula, 2080 of that for Cuba and Porto Rico, and 2040 of that for the Philippines.

ART. 333. The damages and impairment suffered by merchandise after the contract has been consummated and the vendor has the goods at the disposal of the purchaser in the place and at the time agreed upon, shall be suffered by the purchaser, except in cases of carelessness or negligence on the part of the vendor.

ART. 334. The damages and impairment suffered by merchandise, even though it be by reason of an accidental case, shall be for the account of the vendor in the following cases:

1. If the sale took place by number, weight, or measure, or if the article sold is not fixed and determined, with marks and signs which identify it.

2. If by reason of an express agreement or the usages of commerce, in view of the nature of the article sold, the purchaser has the privilege to previously examine and investigate it.

3. If the contract contains a clause to the effect that the delivery is not to be made until the article sold has acquired the conditions stipulated.

ART. 335. If the merchandise sold should perish or deteriorate and said loss is to be suffered by the vendor, he shall return to the purchaser the amount of the price he may have received.

ART. 336. A purchaser who, at the time of receiving the merchandise, fully examines the same, shall not have a right of action against the vendor, alleging a defect in the quantity or quality of the merchandise.

A purchaser shall have a right of action against a vendor for defects in the quantity or quality of merchandise received in bales or packages, provided he brings his action within the four days following its receipt, and that the average is not due to accident or to nature of the merchandise or to fraud.

In such cases the purchaser may choose between the rescission of the contract or its fulfillment in accordance with what has been agreed upon, but always with the payment of the damages he may have suffered by reason of the defects or faults.

The vendor may avoid this claim by demanding when making the delivery that the merchandise be examined fully by the purchaser with regard to the quantity and quality thereof.

See, with regard to the examination of commercial goods, article 2119 of the law of civil procedure for the Peninsula, article 2080 of that amended for Cuba and Porto Rico, and article 2040 of that for the Philippines.

ART. 337. If the period for the delivery of the merchandise sold has not been stipulated, the vendor must have it at the disposal of the purchaser within twenty-four hours after the contract.

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ART. 338. The expenses of the delivery of merchandise in commercial sales shall be defrayed by the vendor until said merchandise is placed at the disposal of the purchaser, weighed or measured, unless there is any agreement to the contrary.

The expenses arising from the receipt and removal of the merchandise from the place of delivery shall be defrayed by the purchaser.

ART. 339. After the merchandise sold has been placed at the disposal of the purchaser and after the latter has stated his satisfaction, or if said merchandise is judicially deposited in the case foreseen in article 332, the obligation of the purchaser to pay the price of the same in cash or at the periods agreed upon with the vendor shall begin.

The vendor shall constitute himself the depositary of the goods sold, and shall be obliged to care for and preserve them in accordance with the laws governing deposits.

ART. 340. During the time the articles sold are in the possession of the vendor, even though they be in the capacity of deposit, the latter shall have preference to the same over any other creditor to obtain the payment of the price with the interest arising from the delay.

ART. 341. The delay in the payment of the article purchased shall obligate the purchaser to pay the legal rate of interest on the amount he owes the vendor.

ART. 342. A purchaser who has not made any claim based on the inherent defects in the article sold, within the thirty days following its delivery, shall lose all rights of action against the vendor for such defects.

ART. 343. The amounts which, by way of guaranty, are delivered in commercial sales shall always be considered as paid on account of the price and as a proof of the ratification of the contract, unless there is an agreement to the contrary.

ART. 344. Commercial sales shall not be rescinded by reason of damage; but the contracting party who acted with malice or fraud, in the contract or in its fulfillment, shall indemnify for loss and damage, without prejudice to the criminal action which may be proper.

ART. 345. In all commercial sales the vendor shall be obliged to legally defend the title to the articles sold to the purchaser, and to indemnify him for any prejudice he may suffer by being disturbed in his possession of the same.

SECTION SECOND.—*Exchanges.*

ART. 346. Commercial exchanges of goods shall be governed by the same rules as are prescribed in this title for purchase and sale, in so far as they are applicable to the circumstances and conditions of said contracts.

SECTION THIRD.—*Transfers of nonnegotiable credits.*

ART. 347. Commercial credits, which are not negotiable nor payable to the bearer, may be transferred by the creditor without requiring the consent of the debtor, it being sufficient that the transfer be communicated to him.

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The debtor shall be obligated to the new creditor by virtue of the notification, and from the time said transfer is made the only legitimate payment shall be considered that made to the latter.

ART. 348. The conveyer shall answer for the legality of the credit and for the capacity in which he made the transfer; but he shall not answer for the solvency of the debtor, unless there is an express agreement requiring him to do so.

TITLE VII.—COMMERCIAL CONTRACTS FOR TRANSPORTATION OVERLAND.[a]

ART. 349. A contract for all kinds of transportation overland or river shall be considered commercial—

1. When it involves merchandise or any commercial goods.
2. When, no matter what his object may be, the carrier is a merchant or customarily is engaged in transporting goods for the public.

With regard to number 1 see article 2119 of the law of civil procedure for the Peninsula, article 2080 of that for Cuba and Porto Rico, and 2040 of that for the Philippines.

ART. 350. The shipper as well as the carrier of merchandise and goods may mutually demand of each other the issue of a bill of lading in which there shall be stated—

1. The name, surname, and domicile of the shipper.
2. The name, surname, and domicile of the carrier.
3. The name, surname, and domicile of the person to whom or to whose order the goods are addressed, or whether they are to be delivered to the bearer of said bill.
4. A statement of the goods, stating their generic character, their weight, and the external marks or signs of the packages containing the same.
5. The cost of the transportation.
6. The date on which the shipment is made.
7. The place of the delivery to the carrier.
8. The place and time the delivery is to be made to the consignee.
9. The damages to be paid the carrier in case of delay, if any agreement is made on this point.

The actions arising from the nondelivery of certain merchandise at the point of destination must be brought before the judge of the latter point and not before the one of the domicile of the railroad company against whom the action is brought. (Opinion of June 21, 1888.)

The bill of lading may be validly indorsed by the consignee to a third person without necessity of acquainting the carrier thereof. (Opinion of September 28, 1889.)

This article does not require as a necessary requisite in a commercial transportation contract the delivery of the bill of lading to the shipper, but it grants the privilege to the shipper as well as to the carrier to demand it. (Opinion of May 6, 1895. *Gaceta* of August 16.)

ART. 351. In shipments made over railroads or by other enterprises which are subject to fixed schedules or the time fixed by regulations, it shall be sufficient that the bills of lading or declarations of shipment furnished by the shipper refer, with regard to the rate, time, and special conditions of the transportation, to the schedules and regulations, the application of which is requested; and should no schedule be determined the carrier must apply the rates of the mer-

[a] See the statement of reasons which Mr. Alonso Martinez attached to his project in the portion relating to these contracts.

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chandise paying the lowest, with the condition inherent thereto, always including their statement or reference in the bill of lading delivered to the shipper.

The obligation of railroad companies to invoice the packages which are presented to them for the purpose is subordinated to the condition of the shipper in making the transportation contract subjecting himself to the provisions of the regulations or those legitimately established by the carrier company. (Opinion of December 14, 1888.)

Since the publication of this code of commerce in 1885 the rights and obligations arising from transportation contracts by railroads are governed in the first place by the regulations of said railroads, the provisions contained in the police law of railroads of November 23, 1877, and the regulations for its execution of March 2, 1892, being supplementary. (Opinion of March 2, 1892. *Gaceta* of April 17.)

ART. 352. Bills of lading or tickets in the case of transportation of passengers may be different, one for persons and another for baggage, but all of them shall contain the name of the carrier, the date of shipment, the points of departure and arrival, the price, and with regard to baggage, the number and weight of the packages, with any other indications which may be considered necessary in order to easily identify them.

ART. 353. The legal instruments of the contract betweeen the shipper and the carrier shall be the bills of lading, by the contents of which all disputes which may arise with regard to their execution and fulfillment shall be decided without admission of other exceptions than forgery or material errors in the drafting thereof.

After the contract has been consummated the bill of lading issued shall be returned to the carrier, and by virtue of the exchange of this certificate for the article transported, the respective obligations and actions shall be considered as canceled, unless in the same act the claims which the contracting parties desire to reserve are reduced to writing, exception being made of the provisions of article 366.

If in case of loss or for any other reason whatsoever, the consignee can not return upon receiving the merchandise the bill of lading subscribed by the carrier, he shall give said carrier a receipt for the goods delivered, this receipt producing the same effects as the return of the bill of lading.

The receipt of goods transported and the payment of the transportation without protest or reserve extinguishes all rights of action against the carrier company, in accordance with article 150 of the regulations for the police of railroads of July 8, 1859, in conformity with article 207 of the code of commerce of 1829, which is the equivalent of the one we annotate. (Opinion of December 3, 1887.)

See the addition to article 360.

ART. 354. In the absence of a bill of lading disputes shall be decided by virtue of the legal proofs each contracting party may submit in support of his respective claim, in accordance with the general provisions established in this code for commercial contracts.

In so far as the proof is concerned, see articles 51 et seq. of this code, together with article 578 of the law of civil procedure for the Peninsula, article 577 of that for Cuba and Porto Rico, and 561 of that for the Philippines.

ART. 355. The liability of the carrier shall begin from the moment he receives the merchandise, in person or through a person intrusted thereto in the place indicated for their reception.

In order to avoid questions with regard to the scope to be given the article we annotate, there must be taken into consideration that a delivery, according

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to article 112 of the regulations for the execution of the police law of railroads, must not only take place in the building fixed for the purpose, but must be delivered to the persons designated by the company for the purpose, there not being considered as such the auxiliary employees engaged in labor or in mechanical services in the offices and stations.

The supreme court in opinions of April 4, 1873, 11th of the same month, of the year 1877, and of October 17, 1888, established that, after merchandise has been delivered for transportation in the building destined to the purpose, the carrier receiving it shall be liable for the injury and damage by reason of the loss or impairment of the same, in accordance with article 114 of the regulations for the police of railroads.

ART. 356. Carriers may refuse to accept packages which appear unfit for transportation; and if said transportation is to be made over a railroad, and the shipment is insisted on, the company shall carry it, being exempt from all liability if it so states in the bill of lading.

ART. 357. If the carrier by reason of well-founded suspicions as to the correctness of the declaration of the contents of a package should determine to examine it, he shall do so before witnesses, in the presence of the shipper or of the consignee.

Should the shipper or consignee to be cited not appear, the examination shall be made before a notary, who shall draft a certificate of the result of the examination, for the proper purposes.

If the declaration of the shipper should be correct, the expenses caused by the examination and those of carefully repacking the packages shall be defrayed by the carrier, and in a contrary case by the shipper.

ART. 358. Should no period within which goods are to be delivered be previously fixed, the carrier shall be under the obligation to forward them in the first shipment of the same or similar merchandise which he may make to the point of delivery; and should he not do so, the damages occasioned by the delay shall be suffered by him.

The actions arising from the nondelivery of certain merchandise at the station of the point of destination must be instituted before the judge of the latter point and not before the one of the domicile of the company against which the action has been brought. (Opinion of June 21, 1888.)

According to rule 20 of the royal order of February 1, 1887, issued by the secretary of the interior, authorized by a law to regulate the service of railroads, the judicial claims arising from the transportation contract may be brought, at the option of the shipper or of the consignee, against the company which received the merchandise, or against the company which was to have delivered it, before the competent authority in either case. (Opinion of the supreme court of March 18, 1889. *Gacetas* of April 3 and 8.)

ART. 359. If there should be an agreement between the shipper and the carrier with regard to the road over which the transportation is to be made, the carrier can not change the route, unless obliged to do so by force majeure; and should he do so without being forced to, he shall be liable for any damage which may be suffered by the goods transported for any cause whatsoever, besides being required to pay the amount which may have been stipulated for such a case.

When on account of the said force majeure the carrier is obliged to take another route, causing an increase in the transportation charges, he shall be reimbursed for said increase after presenting the formal proof thereof.

ART. 360. The shipper may, without changing the place where the delivery is to be made, change the consignment of the goods delivered to the carrier, and the latter shall comply with his orders, provided that at the time of making the change of the consignee the bill of

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lading subscribed by the carrier be returned to him, if one were issued, exchanging it for another containing the novation of the contract.

The expenses arising from the change of consignment shall be defrayed by the shipper.

Neither this article nor article 353 prohibit the consignee from indorsing or transferring the bill of lading, and the indorser shall be liable, as the legitimate representative of the actions and rights of the consignee, to make use of the same. (Opinion of September 28, 1889. *Gaceta* of November 12.)

ART. 361. Merchandise shall be transported at the risk and venture of the shipper, unless the contrary was not expressly stipulated.

Therefore, all damages and impairment suffered by the goods in transportation, by reason of accident, force majeure, or by virtue of the nature or defect of the articles, shall be for the account and risk of the shipper.

The proof of these accidents is incumbent on the carrier.

With regard to accidents to be considered of force majeure for the purposes of article 36 of the railroad law, see article 29 of the regulations for its execution of May 24, 1878.

ART. 362. The carrier, however, shall be liable for the losses and damages arising from the causes mentioned in the foregoing article if it is proved that they occurred on account of his negligence or because he did not take the precautions usually adopted by careful persons, unless the shipper committed fraud in the bill of lading, stating that the goods were of a class or quality different from what they really were.

If, notwithstanding the precaution referred to in this article, the goods transported run the risk of being lost on account of the nature or by reason of an unavoidable accident, without there being time for the owners of the same to dispose thereof, the carrier shall proceed to their sale, placing them for this purpose at the disposal of the judicial authority or of the officials determined by special provisions.

For the sale referred to in this article, the proceedings shall be in accordance with articles 2161 et seq. of the law of civil procedure for the Peninsula, 2122 of that for Cuba and Porto Rico, and 2082 of that for the Philippines.

According to an opinion of the supreme court of April 27, 1876, indemnity for damages shall be proper in transportation contracts when a robbery has taken place which could be avoided.

ART. 363. With the exception of the cases prescribed in the second paragraph of article 361, the carrier shall be obliged to deliver the goods transported in the same condition in which, according to the bill of lading, they were at the time of their receipt, without any detriment or impairment, and should he not do so, he shall be obliged to pay the value of the goods not delivered at the point where they should have been and at the time the delivery should have taken place.

If part of the goods transported should be delivered the consignee may refuse to receive them, when he proves that he can not make use thereof without the others.

Article 363, which we annotate, and articles 364 and 365 et seq., in fixing the obligations of the carrier and the amounts to be paid to the owner in cases of loss or damage of the merchandise, do not exclude the indemnification for other damage caused. (Opinion of November 19, 1888.)

See the annotation to the foregoing article.

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The loss of some goods is only an indefinite delay, for which reason the indemnity for loss and damage can not exceed the current price of the goods on the day and at the place they should have been delivered. (Opinion of March 2, 1892. *Gaceta* of April 17.)

ART. 364. If the effect of the averages referred to in article 361 should be only a reduction in the value of the goods, the obligation of the carrier shall be reduced to the payment of the amount of said reduction in value, after appraisal by experts.

ART. 365. If, on account of the averages, the goods are rendered useless for purposes of sale or consumption in the manner proper to the same the consignee shall not be bound to receive them, and may leave them on the hands of the carrier, demanding payment therefor at current market prices.

If among the goods damaged there should be some in good condition and without any defect whatsoever, the foregoing provision shall be applicable with regard to the damaged ones, and the consignee shall receive those which are perfect, this separation being made by distinct and separate articles, no object being divided for the purpose, unless the consignee proves the impossibility of conveniently making use thereof in this form.

The same provision shall be applied to merchandise in bales or packages, with distinction of the packages which appear perfect.

See the addition to article 363.

The supreme court reversed and annulled a decision by which a company was adjudged to pay without distinction, the value of three bales of hides of which the shipment was composed, and in addition 50 per cent by reason of indemnity for damages; it being proved that of the three bales one arrived intact and that fine hides had been removed, leaving nothing but the coarse ones, and that the impossibility of making use of one without the other had not been proved, violating thereby the provisions of the article we annotate and the last paragraph of article 371, which fixes the manner of making the appraisement of the indemnity in such a case. (Opinion of March 19, 1899.)

ART. 366. Within the twenty-four hours following the receipt of the merchandise a claim may be brought against the carrier on account of damage or average found therein on opening the packages, provided that the indications of the damage or average giving rise to the claim can not be ascertained from the exterior of said packages, in which case said claim would only be admitted on the receipt of the packages.

After the periods mentioned have elapsed, or after the transportation charges have been paid, no claim whatsoever shall be admitted against the carrier with regard to the condition in which the goods transported were delivered.

See article 2127 of the law of civil procedure for the Peninsula, and article 2088 of that for Cuba and Porto Rico.

The supreme court established in an opinion of April 16, 1875, that when a consignee receives the merchandise transported and indemnity for the delay, paying the freight charges without protest, all actions against the carrier are extinguished.

ART. 367. If there should occur doubts and disputes between the consignee and the carrier with regard to the condition of goods transported at the time of their delivery to the former, the said goods shall be examined by experts appointed by the parties, and a third one, in case of disagreement, appointed by the judicial authority, the result of the examination always being reduced to writing; and if the persons interested should not agree to the report of the experts

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and could not reach an agreement, said judicial authority shall have the merchandise deposited in a safe warehouse, and the parties interested shall make use of their rights in the proper manner.

For the examination and deposit referred to in this article the proceedings shall be in accordance with articles 2119 of the law of civil procedure for the Peninsula, 2080, et seq. of that for Cuba and Porto Rico, and 2040 of that for the Philippines.

ART. 368. The carrier must deliver to the consignee without any delay or difficulty the merchandise received by him, by reason of the mere fact of being designated in the bill of lading to receive it; and should said carrier not do so he shall be liable for the damages which may arise therefrom.

With regard to article 221 of the repealed code, with which the article we annotate corresponds, the supreme court established, in an opinion of October 5, 1876, that although the said article declares that the carrier has no personality to investigate the title with which the consignee receives the merchandise transported, and that he must deliver it without any delay or difficulty on account of the mere fact of being designated in the bill of lading to receive it, being liable in case of not doing so for all the damages which may be incurred by the owner on account of the delay, this provision must be construed in general terms and in ordinary cases where there is no insurmountable material or legal obstacle in the way of making the delivery, being furthermore subordinated to the provisions of article 223 of the said code.

ART. 369. Should the consignee not be at the domicile indicated in the bill of lading, or should refuse to pay the transportation charges and expenses, or to receive the goods, the deposit of said goods shall be ordered by the municipal judge, where there is no judge of first instance, to be placed at the disposal of the shipper or sender, without prejudice to a third person having a better right, this deposit having all the effects of a delivery.

See articles 2119 of the law of civil procedure for the Peninsula, 2080 of that for Cuba and Porto Rico, and 2040 of that for the Philippines.

ART. 370. If a period has been fixed for the delivery of the goods, it must be made within the same, and otherwise the carrier shall pay the indemnity agreed upon in the bill of lading, neither the shipper nor consignee being entitled to anything else.

Should no indemnity have been agreed upon and the delay exceeds the time fixed in the bill of lading, the carrier shall be liable for the damages which may have been caused by the delay.

ART. 371. In cases of delay on account of the fault of the carrier, referred to in the foregoing articles, the consignee may leave the goods transported on the hands of the carrier, informing him thereof in writing before the arrival thereof at the point of destination.

When this abandonment occurs, the carrier shall satisfy the total value of the goods, as if they had been lost or mislaid.

Should the abandonment not occur the indemnity for loss and damages on account of the delays can not exceed the current price of the goods transported on the day and at the place where the delivery was to have been made. The same provision shall be observed in the cases where this indemnity is due.

The provisions of this article are not applicable when goods are not in question which are to be sold at their point of delivery, but consist of samples having no inherent value, except for the purposes of making sales. (Opinion of March 27, 1890. *Gacetas* of July 30 and August 5.)

The exercise of the right granted by this article, of abandonment of merchandise received after delay, and after the price of the merchandise has been

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fixed and accepted by both parties, excludes all claims for loss and damages, which can only be brought if the abandonment does not take place. (Opinion of the Supreme Court of September 28, 1895. *Gaceta* of November 12.)

See the addition to article 365.

ART. 372. The value of the goods which the carrier must pay in case of their being lost or mislaid shall be fixed in accordance with the declaration contained in the bill of lading, no proofs being allowed on the part of the shipper that there were among the goods declared therein articles of greater value, or money.

Horses, vehicles, vessels, equipments, and all the other principal and accessory means of transportation, shall be especially obligated in favor of the shipper, although with relation to railroads said obligation shall be subordinated to the provisions of the laws of concession with regard to property and to those of this code with regard to the manner and form of making attachments and retentions against the said companies.

ART. 373. A carrier who delivers merchandise to a consignee by virtue of agreements or combined services with other carriers shall assume the obligations of the carriers who preceded him, reserving his right to proceed against the latter if he should not be directly responsible for the fault which gives rise to the claim of the shipper or of the consignee.

The carrier making the delivery shall also assume all the actions and rights of those who may have preceded him in the transportation.

The sender and the consignee shall have a right of action against the carrier who executed the transportation contract, or against the other carriers who received the goods transported without reserve.

The reservations made by the latter shall not exempt them, however, from the liabilities they may have incurred by reason of their own acts.

ART. 374. The consignees to whom the remittance was made can not defer the payment of the expenses and transportation charges on the goods received after twenty-four hours have elapsed from the time of the delivery; and in case of delay in making this payment, the carrier may request the judicial sale of the goods he transported to a sufficient amount to cover the transportation charges and the expenses incurred.

With regard to the proceedings to recover the amount of the expenses and the transportation charges of the goods, see No. 1, or article 1544 and article 1545 of the law of civil procedure for the Peninsula, 1543 of that for Cuba and Porto Rico, and 1526 of that for the Philippines.

ART. 375. The goods transported shall be specially obligated to answer for the transportation charges and for the expenses and fees caused by the same during their transportation, or until the time of their delivery.

The special right shall be limited to eight days after the delivery has been made, and after said prescription the carrier shall have no further right of action than that corresponding to an ordinary creditor.

ART. 376. The preference of the carrier to the payment of what is due him for the transportation and expenses of the goods delivered to the consignee shall not be affected by the bankruptcy of the latter, provided the action is brought within the eight days mentioned in the foregoing article.

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ART. 377. The carrier shall be liable for all the consequences arising from noncompliance on his part with the formalities prescribed by the laws and regulations of the public administration during the entire course of the trip and on the arrival at the point of destination, except when his omission arises from his having been induced into error by false statements of the shipper in the declaration of the merchandise.

If the carrier has acted in accordance with a formal order received from the shipper or consignee of the merchandise both shall incur liability.

ART. 378. Transportation agents shall be obliged to keep a special registry, with the formalities required by article 36, in which there shall be entered, in progressive order of numbers and dates, all the goods the transportation of which is undertaken, stating the circumstances required by articles 350 et seq. for the respective bills of lading.

ART. 379. The provisions contained in article 349 et seq. shall also be understood as relating to persons who, although they do not personally effect the transportation of commercial goods, contract to do so through others, either as contractors for a special and fixed transaction or as freight and transportation agents.

In either case they shall be subrogated to the place of the carriers with regard to the obligations and liability of the latter, as well as with regard to their right.

The judicial claims arising from a transportation contract may be brought, at the option of the shipper or consignee, against the company which received the merchandise or against the one which was to deliver the same before the competent authority in either case. (Opinion of March 18, 1889.)

TITLE VIII.—INSURANCE CONTRACTS.[a]

SECTION FIRST.—*Insurance contracts in general.*[b]

ART. 380. An insurance contract shall be commercial if the underwriter is a merchant and the contract is at a fixed premium, or when the insured pays only a single and constant amount as the price or compensation for the insurance.

ART. 381. An insurance contract shall be void—

1. By reason of the bad faith of any of the parties at the time of the execution of the contract.

2. By reason of the incorrect declaration of the insured, even though made in good faith, provided it may influence the estimation of the risks.

3. By reason of the omission or concealment on the part of the insured, or facts or circumstances which may have influenced the execution of the contract.

See articles 752, 781, 788, and 800 of this code, which prescribe the cases of nullity of marine insurance for identical or similar reasons.

ART. 382. An insurance contract shall be reduced to writing in a policy or in another public or private instrument subscribed by the contracting parties.

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[a] See G. O. No. 178, Nov. 11, 1899, G. O. No. 22, Feb. 5, 1900, and G. O. No. 94, Apr. 29, 1900, Hdqrs. Dept. P. R.

[b] Marine insurance is referred to in section 3, Title III, Book III, of this code.

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ART. 383. The policy of an insurance contract must contain—

1. The names of the underwriter and of the insured.
2. The risk against which insurance is taken.
3. The designation and location of the articles insured, and the indications which may be necessary to determine the nature of the risks.
4. The appraised value of the articles insured, in detailed amounts, according to the different kinds of articles.
5. The sum or premium which the insured binds himself to pay, the form and manner of payment, and the place where said payment is to be made.
6. The duration of the insurance.
7. The day and the hour from which the effect of the contract is to begin.
8. The insurance already existing on the same goods.
9. The other agreements made by the contracting parties.

ART. 384. The novations made in the contract during the time of the insurance, increasing the goods insured, extending the insurance to new risks, reducing the latter or the amount insured, or introducing any other essential modification, must be included in the policy of insurance.

See articles 417, 433, and 737 of this code.

ART. 385. The insurance contract shall be governed by the licit agreements contained in each policy or instrument, and in the absence thereof, by the rules contained in this title.

As has been repeatedly declared by the supreme court, the law in insurance contracts is the policy signed by both parties, by the clauses of which all questions arising between the insured and the underwriter must be decided.

With regard to the rights of the underwriter and of the insured see articles 168, case 6, 219, 220, and 221 of the mortgage law, and the second paragraph of article 18 of the regulations for drafting public documents subject to record.

The clause contained in an insurance policy that "all actions for the payment of damages prescribe six months after the date of the fire, or from the last judicial proceedings or decisions rendered in suits instituted by the persons suffering the loss, exempts the company underwriting the insurance from the obligation to pay indemnity if the former allows said period to elapse without appearing before the judge who is declared of competent jurisdiction in a decree of prohibition of another judge. (Opinion of December 22, 1894. *Gaceta* of May 9, 1895.)

SECTION SECOND.—*Fire insurance.*

ART. 386. All personal or real property which is liable to be destroyed or injured by fire may be the subject of an insurance contract against fire.

ART. 387. All commercial securities or instruments are excepted from this provision, as well as those of the State or of private parties, bank notes, shares and obligations of associations, precious stones and metals, in coin or in bullion, and objects of art, unless an express agreement to the contrary is made, the value and conditions of said articles being fixed in the policy.

ART. 388. In contracts of insurance against fire, in order that the underwriter be obligated, he must have received the single premium agreed upon or the partial ones at the periods fixed.

The insurance premium shall be paid in advance, and the payment shall bind the underwriter, no matter what may be the duration of the insurance.

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ART. 389. If the insured delays in paying the premium, the underwriter may rescind the contract within the first forty-eight hours, immediately advising the insured of his action.

Should he not exercise this right, the contract shall be understood as in force and he shall have a right of action to secure an execution to recover payment for the premium or premiums lapsed without further requisite than the acknowledgment of the signatures of the policy.

ART. 390. The value set upon the objects of the insurance, the premiums paid by the insured, the designations, and the appraisements contained in the policy shall not in themselves be proof of the existence of the articles insured at the time and in the place where the fire occurs.

ART. 391. The substitution or change of the articles insured for others of a different kind or species not included in the insurance shall annul the contract from the time the substitution took place.

ART. 392. The alteration or transformation of the articles insured, by reason of an accident or by the act of a third person, shall entitle either of the contracting parties to rescind the contract.

ART. 393. The insurance against fire shall include the repair or indemnity for all the loss and material damage caused by the direct action of the fire and by the inevitable consequences of the fire, and particularly—

1. The expenses incurred by the insured by reason of the transportation of the goods for the purpose of saving them.

2. The damage suffered by the goods saved.

3. The damage to the goods insured caused by the measures adopted by the authority to reduce or extinguish the fire.

ART. 394. In insurance against meteorological accidents, explosions of gas or steam apparatus, the underwriter shall only be liable for the consequences of the fires caused by said accidents, unless there is an agreement to the contrary.

ART. 395. The insurance against fires does not include, unless there is an agreement to the contrary, the loss suffered by the insured on account of suspension of work or of industry, or of profit from the estate lost by fire, or any other similar causes which give rise to losses and damages.

ART. 396. The underwriter shall secure the insured against the effects of fire, be it caused either by an accident or by the malice of strangers or by personal negligence or carelessness of the persons, he is civilly liable for.

The underwriter shall not secure against fires caused by the crime of the insured, nor by military forces in time of war nor on account of those caused by mobs or by eruptions, volcanoes and earthquakes.

ART. 397. The guaranty of the underwriter shall only extend to the goods insured and in the building in which they were located, and his liability shall in no case exceed the amount at which the goods were valued or at which the risk was appraised.

ART. 398. The insured must give an account to the underwriter of—

1. All previous insurances, and those taken out simultaneously or subsequently.

2. The modifications to which the insurance mentioned in the policy was subjected.

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3. The changes and alterations in quality suffered by the goods insured, and which increase the risks.

ART. 399. The goods insured for their full value can not be again insured while the first insurance is in force, unless in case the new underwriters guaranty or give bond for the fulfillment of the contract made with the first underwriter.

ART. 400. If in different contracts one article has been insured for an aliquot part of its value, the underwriters shall contribute to the indemnity in proportion to the amounts they underwrote.

The underwriter may convey to other underwriters one or more parts of the insurance, but shall be directly and exclusively liable to the insured.

In cases of conveyance of part of the insurance or of the reinsurance the assignors who receive the proportionate part of the premium shall be obligated, with regard to the first underwriter, to contribute in equal proportion to the indemnity, assuming the liability of the agreements, transactions, and arrangements made between the insured and the principal or first underwriter.

ART. 401. The insurance shall not be annulled by reason of the death, liquidation, or bankruptcy of the insured, and sale or transfer of the goods, if the article insured consisted of real estate.

The underwriter may rescind the contract by reason of the death, liquidation, or bankruptcy of the insured and the sale or transfer of the goods, if the articles insured consisted of personal property, of a manufacturing establishment, or shop.

In case of rescission, the underwriter must inform the insured or his representatives within the period of fifteen days, which can not be extended.

ART. 402. If the insured or his representative does not inform the underwriter of any of the facts enumerated in the second paragraph of the foregoing article within the period of fifteen days, the contract shall be void from the date on which said acts occurred.

ART. 403. Personal property shall be liable for the payment of the insurance premium with preference to any other credits whatsoever which may be due.

With regard to real property, the provisions of the mortgage law shall be observed.

Articles 168, 219, 220, and 221 of the mortgage law in its sixth case establish a legal mortgage in favor of the underwriters on the property insured for the premiums for two years, and, if the insurance is mutual, for the two last assessments which may have been made. A similar provision is contained in No. 2 of article 1923 of the civil code now in force.

See case number 6 of article 168 and articles 219 to 221 of the mortgage law for the colonies.

ART. 404. In case of a calamity the insured must immediately inform the underwriter, also filing with the municial judge a statement of the goods existing at the time of the calamity, and of the goods saved, as well as the loss suffered, according to his valuation.

ART. 405. The insured must prove the loss suffered, proving the existence of the goods before the fire occurred.

ART. 406. The appraisement of the damage caused by the fire shall be made by experts in the manner established in the policy, by an agreement between the parties, in the absence of which, said appraise-

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ment shall be made in accordance with the provisions of the Law of Civil Procedure.

Articles 2175 et seq. of the law of civil procedure for the Peninsula, article 2136 of that for Cuba and Porto Rico, and article 2096 of that for the Philippines, refer to the appointment of experts in insurance contracts.

ART. 407. The experts shall decide:

1. The causes of the fire.

2. The true value of the goods insured on the day of the fire, before it took place.

3. The value of the same goods after the fire, and everything else which may be submitted to their judgment.

ART. 408. If the amount of loss suffered exceeds the amount of insurance carried, the insured shall be considered his own underwriter for this excess, and shall be liable for the aliquot part of the losses and expenses.

ART. 409. The underwriter shall be obliged to pay the indemnity fixed by the experts within ten days following their decision after it has been agreed to.

In case of delay, the underwriter shall pay the insured the legal interest on the amount due from the date of the termination of said period.

See the doctrine of the opinion of December 22, 1894, in the addition to article 385.

ART. 410. The decision of the experts shall be the basis for an execution against the underwriter, if said decision was rendered before a notary; and should this not have been done, after an acknowledgment and judicial admission of their signatures and of the truth of the instrument.

This constitutes the basis for an execution not admitted in the common law.

ART. 411. The insurer shall choose, within the ten days fixed in article 409, between indemnifying for the calamity, or repair, rebuild, or replace, according to their nature or character, in whole or in part, the goods insured and destroyed by the fire, if an agreement should be reached.

ART. 412. The insurer may acquire the goods saved for himself, provided he pays the insured their true value in accordance with the appraisement referred to in case No. 2 of article 407.

ART. 413. The underwriter after paying the indemnity shall be subrogated to the rights and actions of the insured against all the authors and persons liable for the fire in the necessary capacity or right, as the case may be.

ART. 414. The underwriter, after the calamity, may rescind the contract with regard to ulterior accidents, as well as any other contract he may have made with the insured, advising the latter fifteen days in advance and returning the part of the premium corresponding to the period not elapsed.

ART. 415. The expenses arising from the expert appraisement and the liquidation of the indemnity shall be defrayed for the account in equal parts of the insured and of the underwriter; but if there is an obvious exaggeration of the loss on the part of the insured, the latter shall be the only one liable therefor.

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SECTION THIRD.—*Life insurance.*

ART. 416. Life insurance shall include all the combinations which can be made, making agreements with regard to the payment of premiums or of capital in exchange for the enjoyment of a life annuity or up to a certain age, or the receipt of capital on the death of a certain person, in favor of the insured, his legal representative, or of a third person, or any other similar or analogous combination.

ART. 417. The life-insurance policy shall contain, besides the requisites mentioned in article 383, the following:

1. A statement of the amount insured for, in capital or in annuity.
2. A statement of the reduction or increase in the capital or annuity assured, and of the dates from which said increase or reduction is to be computed.

ART. 418. This contract may be made on the life of a person or of several persons without regard to age, conditions, sex, and state of health.

ART. 419. The insurance may be made in favor of a third person, stating in the policy the name, surname, and conditions of the donor or person insured, or determining said person in some other indisputable manner.

ART. 420. A person insuring a third person is bound to fulfill the conditions of the insurance, the provisions of articles 426 and 430 being applicable to the latter.

ART. 421. Only the person who insures and contracts directly with the underwriting company shall be bound to the fulfillment of the contract as insured and to the consequent payment of the premium, by the payment of the single sum or of the partial ones which may have been agreed upon.

The policy, however, shall entitle the person insured to demand the fulfillment of the contract of the underwriting company.

ART. 422. There shall only be understood embraced in a life insurance the risks which are enumerated specially and in detail in the policy.

ART. 423. The insurance in case of a death shall not be paid if it occurs in any of the following manners:

1. If the insured dies in a duel or as the consequences thereof.
2. If he commits suicide.
3. If he suffers capital punishment for ordinary crimes.

ART. 424. The insurance in case of death shall not be paid, unless there is an agreement to the contrary and the insured pays the extra premium required by the underwriter—

1. If the death occurs on a voyage outside of Europe.[a]
2. If the death occurs in the military or naval service in time of war.
3. If the death occurs in any extraordinary undertaking or act which is notoriously reckless and imprudent.

ART. 424. (Cuba and Porto Rico.) See the note to the text of this article for the Peninsula.

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[a] Although in the corresponding amendment nothing is said, we understand that this article can not be in force in Cuba and Porto Rico in the manner in which it is drafted, and that it must be considered as amended in a similar manner as for the Philippines.

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ART. 424. (Philippines.) The insurance in case of death shall not be paid, unless there is an agreement to the contrary and the insured pays the extra premium required by the underwriter—

1. If the death occurs in voyages *outside the limits of the lands and waters under the jurisdiction of the Spanish provinces of Oceania.*

2. If the death occurs in the military or naval service in time of war.

3. If the death occurs in any extraordinary undertaking or act which is acknowledged as reckless and imprudent.

ART. 425. The insured who delays the payment of the premium or sum agreed upon shall not have a right to demand the amount of the insurance or the amount insured if the calamity occurs or the condition of the contract is complied with if he is in default.

ART. 426. If the insured has paid several partial installments and can not continue the contract, he shall inform the underwriter, reducing the amount insured to the sum which is in just proportion with the installments paid, in accordance with the calculations which appear in the schedules of the insurance company, and taking into consideration the risks run by the latter.

ART. 427. The insured must inform the underwriter of the insurance on his life which he previously or simultaneously takes out in other insurance companies.

The lack of this requisite shall deprive the insured of the benefits of the insurance, he being only entitled to the face value of the policy.

ART. 428. The amounts which the underwriter must deliver to the person insured, in fulfillment of the contract, shall be the property of the latter, even against the claims of the legitimate heirs or creditors of any kind whatsoever of the person who effected the insurance in favor of the former.

ART. 429. The failure or bankruptcy of the insured shall not annul nor rescind the life-insurance contract, but it may be reduced at the request of the legitimate representatives of the bankruptcy, or be liquidated in the terms fixed in article 426.

ART. 430. The life-insurance policies, after the premiums or installments which the insured bound himself to pay have been satisfied, shall be negotiable, the indorsement being placed on the policy itself, the insurance company being informed thereof in an authentic manner by the indorser and indorsee.

The precept of this article is in accordance with the doctrine of an opinion of the supreme court of July 7, 1881, in which it is declared: "That insurance policies are negotiable when their transferable character appears therein in an undoubtable manner."

ART. 431. The life-insurance policy in which a fixed amount and time for payment is stipulated, either in favor of the insured or in that of the underwriter, shall be the basis for an action to obtain an execution with regard to both contracting parties.

The insurance company, after the period fixed in the policy for payment has elapsed, may furthermore rescind the contract, communicating its decision within a period not exceeding twenty days following the due date, and the amount of the policy being for the benefit of the insured exclusively.

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SECTION FOURTH.—*Land transportation insurance.*

ART. 432. All goods which can be transported by the usual means of land locomotion may be the subject of an insurance contract against the risks of transportation.

ART. 433. Besides the requisites which a policy must contain, according to article 383, a transportation-insurance policy must include—

1. The company or person who takes charge of the transportation.
2. The specific kind of goods insured, with a statement of the number of packages and their marks.
3. The designation of the point where the goods insured are to be received and where the delivery is to be made.

ART. 434. Not only the owners of the goods transported, but also all those who are interested or are liable for their preservation, may take out insurance thereon, stating in the policy in what capacity they do so.

ART. 435. The contract for transportation insurance shall include risks of all kinds, no matter what their reason may be, but the underwriter shall not be liable for impairment caused by the defects inherent in the article or on account of the natural lapse of time, unless there is an agreement to the contrary.

ART. 436. In cases of impairment on account of a defect in the article or by reason of lapse of time, the underwriter shall judicially prove the condition of the merchandise insured, within the twenty-four hours following its arrival at the point it is to be delivered.

Without this proof the exemption which he may bring forward as underwriter shall not be admissible.

ART. 437. The underwriters shall subrogate themselves to the rights of the insured for the purpose of bringing an action against the carriers on account of the damage they may be liable for, in accordance with the provisions of this code.

SECTION FIFTH.—*Other kinds of insurance.*

ART. 438. Any other risks may be the subject of a commercial insurance contract, which arises from accidental cases or natural accidents, and the agreements made must be complied with provided they are licit and are in accordance with the provisions of the first section of this title.

TITLE IX.—COMMERCIAL GUARANTIES.[a]

ART. 439. All guaranties shall be considered commercial the purpose of which is to insure the fulfillment of a commercial contract, even though the guarantor is not a merchant.

The supreme court established in an opinion of May 9, 1870, that promissory notes and their securities must accommodate themselves to the character of the contracts which it was desired to assure and guarantee through their execution, and must be subject to the rules determining the nature of the said contracts; and therefore the pledge referred to in article 475 of the code of commerce (486 of this code) to guarantee the payment of bills of exchange, independently of the obligation which is contracted by the person accepting the same and the

[a] See G. O. No. 178, Nov. 11, 1899, G. O. No. 22, Feb. 5, 1900, and G. O. No. 94, Apr. 29, 1900, Hdqrs. Dept. P. R.

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indorser, can not be considered a commercial guaranty, because neither the former nor the latter can change, vary, nor modify the true character of the contract which produced the same.

ART. 440. The commercial guaranty must be reduced to writing, being otherwise null and void.

ART. 441. A commercial guaranty shall be gratuitous, unless there is an agreement to the contrary.

ART. 442. In contracts for an indefinite period, if it has been agreed to give the guarantor a compensation, the guaranty shall continue in force until, by reason of the complete termination of the principal contract which is secured, the obligations arising therefrom are canceled, no matter what their duration may be, unless a fixed period during which the guaranty was to continue in force was expressly agreed upon.

TITLE X.—CONTRACTS AND BILLS OF EXCHANGE.

SECTION FIRST.—*Forms of bills of exchange.*

ART. 443. A bill of exchange shall be considered a commercial instrument, and all the rights and actions arising therefrom, without distinction of persons, shall be governed by the provisions of this code.

When an exchange contract between merchants is in question, the clear and definite provisions of the code of commerce only are to be taken into consideration. (Opinion of April 1, 1887.)

A contract of a bill of exchange is consummated by the acceptance of the same, which binds the person accepting it to pay said bill of exchange, the place of the fulfillment of said obligation being that designated by the drawer as the domicile of the payer, which is the one where the latter must pay; with this data there shall be decided the competency in judicial questions which are instituted by reason of the bill of exchange, in accordance with the provisions of article 62 of the law of civil procedure. (Opinion of August 21, 1890. *Gaceta* of September 5.)

ART. 444. The bill of exchange must contain, in order that it may be admissible in suits—

1. The designation of the place, day, month, and year on which it is issued.
2. The time it falls due.
3. The name and surname, firm name, or title of the person to whose order the payment is to be made.
4. The amount which the drawer orders paid, stating the same in cash or in the figures which commerce may have adopted for exchange purposes.
5. The form in which the consideration is acknowledged, either on account of the receipt of its value in cash or merchandise or other property, which shall be expressed with the words "value received," or accepting it on those which may be pending, which shall be indicated by the words "value on account" or "value understood."
6. The name, surname, firm name, or title of the person from whom the amount of the bill of exchange is received, or to whose account it is charged.
7. The name and surname, firm name, or title of the person or association on whom it is drawn, as well as his or its domicile.
8. The signature of the drawer, in his own hand, or that of his agent having sufficient power of attorney for the purpose.

Paragraph 8 of this article, as well as article 447, refers to drafts drawn in the name of others. (Opinion of December 16, 1890.)

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ART. 445. The clauses of "value on account" and "value understood" shall make the person accepting the draft liable for the amount of the same in favor of the drawer, in order to demand it or compensate him in the manner and at the time which both may have agreed on in making the exchange contract.

ART. 446. The drawer may draw the bill of exchange:

1. To his own order, stating that he reserves to himself the value thereof.

2. On a person, in order that he may make the payment at the domicile of a third person.

3. On himself, at a place which is not his domicile.

4. On another person, at the same place as the residence of the drawer.

5. On himself, but by order and for the account of a third person, this being stated in the bill of exchange.

This circumstance shall not change the liability of the drawer, nor shall the holder acquire any right whatsoever against the third person for whose account the bill was drawn.

ART. 447. All persons who place their signature on bills of exchange in the name of others, as drawers, indorsers, or as acceptors of the same, must be authorized thereto by virtue of a power of attorney of the persons for whom they act, this being stated in the subscribing clause.

The purchasers and holders of bills of exchange shall have a right to demand of the signers the exhibition of the power of attorney.

The managers of associations shall be understood as authorized by the mere fact of their appointment.

In an opinion of October 16, 1861, the supreme court laid down as doctrine: That the provisions of the first paragraph of this article are not applicable to the case in which, a factor having been constituted by virtue of general clauses, that he should be the one to place his signature; and in another of November 27, 1881, it was established: That employees of commerce can neither accept nor indorse bills of exchange or promissory notes if they have no special power of attorney therefor.

ART. 448. The drawers can not refuse to issue to holders of the bills of exchange second and third bills, and as many as they may require of the same bill, provided the request is made before the bills fall due, excepting the provisions of article 500, there being stated in all of them that they shall not be considered valid except in case payment was not made on the first bill of exchange issued, or other prior ones.

ART. 449. In the absence of duplicate copies of the draft issued by the drawer any holder may give the purchaser a copy, stating that he issues it in the absence of the original, which it it desired to substitute.

In this copy there must be inserted literally all the indorsements which the original contains.

ART. 450. If the bill of exchange contains some error or lack of legal formality it shall be looked upon as a promissory note in favor of the holder and for the account of the drawer.

SECTION SECOND.—*Periods and due dates of drafts.*

ART. 451. Drafts may be drawn for cash or on time for one of the following periods:

1. At sight.

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2. At one or more days, and at one or more months after sight.
3. At one or more days or at one or more months from date.
4. At one or more usances.
5. At a fixed or determined day.
6. At fairs.

ART. 452. Each one of these periods shall obligate to the payment of the drafts, as follows:

1. The sight draft, on its presentation.
2. The days or months after sight draft, on the day the period fixed elapses, to be counted from the day following its acceptance or protest on account of nonacceptance.
3. The days or months from date draft as well as that at one or more usances, on the day the period fixed elapses, to be counted from that immediately following the date of the draft.
4. Those drawn for payment on a certain date, on said date.
5. Those drawn on fairs, on the last day thereof.

ART. 453. The usance of the drafts drawn in one place on another in the interior of the Peninsula and adjacent islands shall be sixty days.

In drafts drawn in foreign countries on any place in Spain it shall be—

If drawn in Portugal, France, England, and Germany, sixty days.

In other countries, ninety days.

ART. 453. (Cuba and Porto Rico.) The usance of drafts drawn in one place on another in the interior of *the islands of Cuba and Porto Rico shall be sixty days.*

That of drafts drawn on Cuba or Porto Rico in the islands and coasts of the waters of the Antilles and Gulf of Mexico, and in the United States, Guatemala, Honduras, Nicaragua, Costa Rica, and Brazil, sixty days.

In other countries, ninety days.

ART. 454. The months for the periods of drafts shall be computed from date to date.

If in the month the draft falls due there is no day equivalent to that of the date on which the bill was drawn it shall be understood that it falls due the last day of the month.

ART. 455. All drafts must be paid on the day they fall due, before sunset, without any days of grace or of courtesy.

If the day it falls due should be a holiday the draft shall be paid on the previous day.

SECTION THIRD.—*Obligations of drawers.*

ART. 456. The drawer shall be under the obligation to supply the funds necessary to the person on whom the bill was drawn, unless the draft is made for the account of a third person, in which case the obligation will rest on the latter, always reserving the direct liability of the drawer with regard to the purchaser or holder of the draft and that of the third person for whose account the draft was made with regard to the drawer.

ART. 457. The supply of funds shall be considered made, when, the bill being due, the person on whom it was drawn is the debtor of an equal or greater sum than the draft to the drawer or to the third person for whose account the bill was drawn.

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ART. 458. The expenses arising from the nonacceptance or nonpayment of the draft shall be paid by the drawer or by the third person for whose account it was made, unless he proves that he supplied the funds at the proper time, or that he was a creditor in accordance with the foregoing article, or that he was specially authorized to draw for the amount in question.

In any of the three cases, the drawer may require of the person obligated to accept and to pay, the indemnity for the expenses which he may have paid the holder of the draft.

ART. 459. The drawer shall be civilly liable for the results of his draft to all the persons who successively acquire and convey it.

The effects of this liability are specified in articles 456, 458, and the following one.

ART. 460. The liability of the drawer shall cease when the holder of the draft has not presented it or did not protest it in due time and form, provided he proves that when the bill fell due he had supplied the funds for its payment in the manner prescribed in articles 456 and 457.

Should he not adduce this proof, he shall reimburse the amount of the draft not paid, even though the protest was not made at the proper time, during the time the draft has not prescribed. Should he adduce said proof, the liability for the reimbursement shall be incurred by the person who is in default, provided the draft has not prescribed.

SECTION FOURTH.—*Indorsements of bills of exchange.*

ART. 461. The ownership of drafts shall be transferred by indorsement.

ART. 462. The indorsement must contain:

1. The name and surname, firm name, or title of the person or company to whom or which the draft is transferred.
2. The form in which the assignor acknowledges the consideration of the purchaser, as stated in No. 5 of article 444.
3. The name and surname, firm name, or title of the person from whom it is received, or to the account of whom it is charged, if it is not the same person to whom the draft is transferred.
4. The date on which it is drawn.
5. The signature of the indorser, or of the person legally authorized to sign for him, which shall be stated in the subscribing clause.

ART. 463. If the statement of the date is omitted in the indorsement, the ownership of the draft shall not be transferred, and it shall be understood as simply a commission for collection.

ART. 464. If a date prior to the day on which the indorsement was made is placed on the draft, the indorser shall be liable for the damages suffered thereby by a third person, without prejudice to the penalty which he may incur for the crime of forgery, if he did so maliciously.

ART. 465. Indorsements signed in blank and those in which the value is not stated shall transfer the ownership of the draft and shall produce the same effect as if "value received" were written therein.

ART. 466. Drafts not issued to order can not be indorsed, nor those which have fallen due or are damaged.

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The transfer of ownership shall be licit by the means acknowledged in the common law; and if, however, an indorsement is made, it shall have no further force than that of a simple cession.

ART. 467. The indorsement shall produce in each and every one of the indorsers the liability for the guaranty for the amount of the draft, if it is not accepted, and to its repayment, with the costs of the protest and reexchange, if not paid when due, provided the proceeding of presentation and protest took place at the time and in the manner prescribed in this code.

This liability shall cease on the part of the indorser who, at the time of transferring the draft, may have placed thereon the clause "without my liability."

In such case the indorser shall only answer for the identity of the person making the transfer or for the right with which he makes the transfer or indorsement.

The supreme court, in an opinion of March 18, 1875, declared that it is a principle of international private law that a bill of exchange, the ownership of which is transferred by the indorsement of the persons who successively acquire it, includes, when this is done, a similar number of perfect contracts between the respective indorser and the person to whom he transfers it, independently of the original contract made between the drawer and the purchaser; and each one of these contracts is governed, not only with regard to the judicial proof and effects, but also with regard to the form, by the laws of the place where they are made and drawn.

In an opinion of December 15, 1880, the supreme court established, that in order that an indorser be liable and obligated to the repayment of the amount of the draft, together with the protest and reexchange costs, it is necessary that the protest proceedings have taken place at the time and in the manner prescribed by the laws; and in another opinion of February 3, 1866, that the indorser who paid the amount of the draft, including the protest costs, has a right of action against the indorsers who preceded him, for the corresponding reimbursement, or against the drawer, and not subject to the reserved agreements which the former may have made.

ART. 468. The broker of negotiable bills of exchange or promissory notes, constitutes himself guarantor of those he acquires or negotiates for the account of others, if he places his indorsement thereon, and he can only refuse to do so for good reasons, when there was an express agreement made by which the principal freed him from the liability. In this case the agent may make the indorsement at the order of the principal, with the clause, "without my liability."

SECTION FIFTH.—*Presentation of drafts and their acceptance.*

ART. 469. Drafts which are not presented for acceptance or payment within the period fixed shall be affected thereby, as well as when they are not protested at the proper time.

ART. 470. The drafts drawn in the Peninsula and Balearic islands on any place therein at sight or at a period counted from sight must be presented for collection or acceptance within forty days from their date.

However, a person who draws a bill of exchange at sight or at a period counted after sight may fix a period within which the presentation must be made; and in such case the holder of the draft shall be obliged to present it within the period fixed by the drawer.

ART. 471. Bills of exchange drawn between the Peninsula and the Canary Islands shall be presented in the cases referred to in the two foregoing articles within the period of three months.

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ART. 472. Bills of exchange drawn between the Peninsula and the Spanish Antilles or other points which are on this side of Cape Horn and the Cape of Good Hope, no matter what may be the form of the period mentioned therein, shall be presented for payment, or acceptance within six months at most.

With regard to places which are on the other side of said capes the period shall be of one year.

ART. 473. Persons forwarding bills of exchange to points across the seas must send at least second copies in different vessels from those by which the first were sent; and should they prove that the carrying vessels suffered some accident on the sea which delayed their voyage, the time which elapsed up to the date on which said accident was made known in the place of residence of the sender shall not be taken into consideration in the computation of the legal period.

The same effect shall be produced by the real or presumed loss of the vessels.

In accidents which occurred on land and which are well known, the same rule shall be observed with regard to the computation of the legal period.

ART. 474. Drafts drawn at sight, or at a period counted after sight, in foreign countries on places in the territory of Spain shall be presented for collection or acceptance within the forty days following their introduction in the Kingdom, and those drawn after date at the times stipulated therein.

ART. 475. Drafts drawn in Spanish territory on foreign countries shall be presented in accordance with the laws in force in the place where they are paid.

ART. 475. (Philippines.) Drafts drawn in the *Philippine Islands* on foreign countries shall be presented in accordance with the laws in force in the place where they are to be paid.[a]

ART. 476. The holders of the drafts drawn at a period counted after the date thereof need not be presented for acceptance.

The holder of the draft may, if he deems it convenient to his interests, present it to the person on whom it is drawn before it falls due, and in such case, the latter shall accept it or shall state the reasons for his refusal to do so.

ART. 477. After a draft has been presented for acceptance within the periods fixed in the foregoing articles, the person or persons on whom it is drawn must accept it by means of the words "*I accept*" or "*we accept*," adding the date, or state to the holder their reasons for not accepting it.

If the bill of exchange is drawn at sight or at a period to be counted after sight, and the person on whom it is drawn does not add the date of the acceptance, the period shall run from the day on which the holder could have presented the draft without delay in the mail; and the computation of time being made in this manner, and the draft being due, it is collectible on the day immediately following that of the presentation.

ART. 478. The acceptance of the draft must take place or be refused on the same day on which the holder presents it for this purpose, and the person of whom acceptance is demanded can not retain the draft in his possession under any pretext whatsoever.

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[a] The difference noted between the articles of the code for the Philippines and those for the Peninsula must be simple errata in the former.

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If the draft presented for acceptance is to be paid in a place other than that of the residence of the person accepting the same, the domicile in which payment is to be made must be stated in the draft.

The person who receives a draft for acceptance, if it is drawn on him, or to have it accepted if it is drawn on a third person, and should retain possession thereof expecting another copy, and shall advise its acceptance by means of a letter, telegram, or other means of writing, shall be liable to the drawer and indorsers thereof in the same manner as if the acceptance had been placed on the draft in question, even though such acceptance has not taken place, or even when he refuses the delivery of the copy accepted to the person legally requesting it.

ART. 479. Bills of exchange can not be accepted conditionally, but the acceptance for a smaller amount than that contained in the draft can be made, in which case it may be protested for the balance of the full amount of the same.

See article 494 of this code.

ART. 480. The acceptance of a draft shall bind the person accepting it to the payment thereof when it falls due, and he shall not be relieved from making the payment on account of not having been supplied with funds by the drawer, nor for any other reason whatsoever except the forgery of the draft.

ART. 481. In case the acceptance of a bill of exchange is refused it shall be protested, and in view of said protest the holder shall have a right to require the drawer or any one of the indorsers to secure the amount of the draft to his satisfaction, or to deposit the amount thereof, or to reimburse him for the costs of the protest and of the reexchange, discounting the legal rate of interest for the period which still is to elapse until it falls due.

The holder may also, even though the draft has been accepted by the person on whom it is drawn, if the latter allowed other acceptances to be protested, apply before its due date to the other person mentioned therein requesting by protest a better security.

See articles 492, 496, 498, and 519 of this code.

ART. 482. If the holder of a draft allows the periods fixed according to the cases to elapse without presenting it for acceptance, or does not order it protested, he shall lose all rights to demand the security, deposit, or reimbursement, with the exception of the provisions of article 525.

ART. 483. If the holder of a bill of exchange should not present it for collection on the day it falls due, or, in the absence of payment, does not have it protested on the following day, he shall lose his right to be reimbursed by the indorsers; and with regard to the drawer, the provisions of articles 458 and 460 shall be observed.

The holder shall not lose his right to reimbursement, if it were not possible to present the draft or to take out the protest in time by reason of force majeure.

ART. 484. If the bills of exchange should contain indications made by the drawer or indorsers of other persons of whom acceptance is to be demanded in default of the one indicated in the first place, the holder must, after the protest has been made, if the former has refused acceptance, demand acceptance of the persons mentioned.

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ART. 485. Persons who forward drafts from one place to another too late to be presented or protested at the proper time shall be liable for the consequences which may arise by reason thereof.

SECTION SIXTH.—*Pledges and their effects.*

ART. 486. The payment of a draft may be secured by a written obligation, independent of that contracted by the acceptor and indorser, known by the name of pledge.

The purpose of a pledge is to secure the payment of a draft in whole or in part, and, although it constitutes an obligation distinct and independent of that contracted by the acceptor and indorser, it is a commercial contract and accessory to that of the bill of exchange the payment of which it guarantees, and commercial contracts being governed by the special provisions of the code of commerce, in that article 950 of the same, orders in general terms, that actions arising from drafts prescribe three years after they have fallen due, should they have been protested or not, and that, therefore, there are included in this provision all the actions which may be brought by the guarantor against the acceptor who protested the draft for the payment of the amount he may have been required to pay by reason of the pledge. (Opinion of July 8, 1892. *Gaceta* of October 21.)

ART. 487. If the pledge is drawn up in general terms and without restriction, the person giving it shall be liable for the payment of the draft in the same cases and manner as the person for whom he appears as security; but if the pledge is limited as to a determined time, case, amount, or person it shall not produce further liability than that arising from the terms of the pledge.

SECTION SEVENTH.—*Payments.*

ART. 488. Bills of exchange must be paid the holder on the day they fall due, in accordance with article 455.

ART. 489. Bills of exchange must be paid in the money designated therein, and if that could not be procured, in its equivalent, according to the use and customs at the place of payment.

ART. 490. The person paying a bill of exchange before it is due shall not be exempted from paying the amount of the same if the first payment was not made to a legitimate person.

By legitimate person is understood, for the purposes of this article, the person in whose favor the draft is indorsed, provided the indorsement complies with the external formalities required by the commercial law, among which is included the signature of the indorser, according to an opinion of the supreme court of June 27, 1873.

ART. 491. The payment of a bill of exchange payable to bearer which is due shall be considered valid, unless an attachment of the amount thereof by reason of a judicial judgment was previously issued.

With regard to the attachment or provisional deposit of a bill of exchange see in the law of civil procedure for the Peninsula, articles 2128 et seq., and 2089 et seq. of that for Cuba and Porto Rico, and 2049 et seq. of that for the Philippines.

ART. 492. The holder of a draft, who requests its payment, is obliged to satisfy the person paying it as to his identity, by means of instruments or through residents who are acquainted with him or who will guarantee his identity.

The absence of this proof shall not prevent the deposit of the amount of the draft on the day of its presentation in an establishment or with a person accepted by the holder and payor, in which

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case the establishment or person shall retain the sum deposited in his or its possession until the legitimate payment is made.

The expenses and risks arising from this deposit shall be for the account of the holder of the draft.

ART. 493. The holder of a draft shall not be obliged to collect its amount before it falls due; but should he accept said payment it shall be valid, except in case of the bankruptcy of the payor in the fifteen days following, in accordance with the provisions of article 879.

ART. 494. Neither shall the holder be obliged, even after the draft has fallen due, to receive part and not the whole amount of the same, and only with his consent may a portion of its value be paid and the balance be left standing.

In such case the draft may be protested for the amount which has not been paid, and the holder shall retain possession thereof, making a memorandum on the same of the amount collected and giving a separate receipt for said amount.

ART. 495. Drafts accepted must necessarily be paid on the copy which contains the acceptance.

If the payment is made on any of the other ones, the person who made the payment shall be liable for the value of the draft to the third person who is the legitimate holder of the acceptance.

ART. 496. The acceptor can not be forced to payment, even though the holder of the copy not containing the acceptance binds himself to give security to the satisfaction of the former; but in the latter case the bearer may demand the deposit and formulate the protest in the terms mentioned in article 498.

If the acceptor voluntarily admits the security and makes the payment, the former shall be legally canceled as soon as the acceptance has prescribed which gave rise to the execution of the security.

ART. 497. Bills of exchange not accepted may be paid after they have fallen due and not before, on the seconds, thirds, or other ones issued in accordance with the provisions of article 448; but not on the copies given in accordance with the provision of article 449, unless one of the copies issued by the drawer is attached thereto.

ART. 498. The person who may have lost a draft, accepted or not, and the person having in his possession an accepted first draft and who is awaiting the second, and has no other copy with which to request the payment, may demand the payor to deposit the amount of the draft in the public establishment devoted to this purpose, or with a person having their mutual confidence, or designated by the judge or court in case of disagreement, and if the person obliged to pay should refuse to make the deposit, the refusal shall be made known by a protest similar to that for nonpayment, and with this instrument the claimant shall preserve his rights against the persons who may be liable for the results of the draft.

The supreme court, in an opinion of April 28, 1879, established the following doctrine: That although it is true that, in accordance with articles 462 and 463 of the code of commerce of 1829, the acceptance of bills of exchange places the acceptor under the obligation to pay them when they fall due, unless their forgery is proven, there must be excepted from this general rule the case prescribed in article 507 (498 of this code), according to which the person who has lost a bill of exchange, accepted or not, of which he has no other copy to request payment, can not do anything further with the payor than to request him to deposit the amount of the same, and if the payor should not consent to make the deposit this refusal shall be made known by means of a protest executed with the same formalities as are required for protests on account of nonpayment; by pursuing this course the claimant shall fully preserve his rights against the persons liable for the legal effects of the draft.

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See articles 480 and 522 of this code, articles 2128 et seq. of the law of civil procedure for the Peninsula, article 2089 of that for Cuba and Porto Rico, and article 2049 of that for the Philippines.

ART. 499. If the draft lost should have been drawn abroad or beyond the seas, and the holder proves his ownership by the books and by the correspondence of the person from whom he received the draft, or by a certificate of the broker who may have mediated in the transaction, he shall be entitled to recover its value, if besides this proof he gives sufficient security, the effects of which shall continue until the copy of the draft given by the said drawer is presented or until it has prescribed.

ART. 499. (Philippines.) If the draft lost should have been drawn abroad or *outside of the territory of the Philippine Islands*, and the holder proves his ownership by the books or by the correspondence of the person from whom he received the draft, or by a certificate of the broker who mediated in the transaction, he shall be entitled to recover its value, if besides this proof he gives sufficient security, the effects of which shall continue until the copy of the draft given by the said drawer is presented or until it has prescribed.[a]

ART. 500. The request for a copy to take the place of the draft lost must be made by the last holder, from the person who transferred it to him, and thus successively from one to another indorser until the drawer is reached.

No person can refuse to lend his name and interposition to the steps taken to procure a new copy, the owner of the draft defraying the expenses which may arise until it is obtained.

ART. 501. The payments made on account of the value of a draft by the person on whom it is drawn shall reduce the liability of the drawer and indorsers in like proportion.

SECTION EIGHTH.—*Protests.*

ART. 502. The nonacceptance or nonpayment of bills of exchange must be proven by means of a protest, without the first protest having been made exempting the holder from making the second, and without the death of the person on whom it is drawn nor his condition of bankruptcy permitting the holder to not make the protest.

With regard to the article we annotate, the supreme court established in an opinion of March 30, 1875, that a protest for nonacceptance does not exempt the holder of the draft from the duty to protest it again if it is not paid.

ART. 503. All protests on account of nonacceptance or nonpayment place the person who gave rise thereto under the obligation to defray the expenses, losses, and damages.

In an opinion of December 5, 1882, the supreme court stated: The costs of protest and redraft by reason of the nonacceptance and nonpayment of a draft against a person for the value of goods sold which has not been paid, as well as the interest on the amount which was not paid when due, are to be defrayed by the payor and a judgment which exempts him from these obligations violates the provisions of this article.

ART. 504. In order that a protest may be valid, it must necessarily include the following conditions:

1. It must be made before sunset on the day following that on which acceptance or payment was refused; and, if it is a holiday, on the first working day.

[a] With regard to this article see the note to article 475. A similar amendment must be considered made for the islands of Cuba and Porto Rico.

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2. It must be made before a notary public.

3. Said protest must be served on the person on whom the draft was drawn, in the domicile where it is to be paid, if he can be found there, and not being found, on his employees, should he have any; or, in the absence of the latter, on his wife, children, or servants, or on the neighbor referred to in article 505.

4. It must contain an exact copy of the draft, of its acceptance, should it have been accepted, and of all the indorsements and indications included in the same.

5. It must include the demand for payment made of the person who must accept or pay the draft; and should he not have been found, the demand shall be made of the person with whom the transaction is made.

6. It must also contain the answer given to the demand.

7. It must state in the same manner the threat that the expenses and losses are to be paid by the person who occasioned them.

8. It must be signed by the person who makes it, and, should he not know how or not be able to do so, by two attending witnesses.

9. It must state the date and hour when the protest was made.

10. There must be given the person with whom the proceedings were held a copy of the protest drafted on common paper.

With regard to articles 512, 513, and 517 of the code repealed, which accord with the one we annotate, the supreme court declared in an opinion of December 26, 1879, that the notarial instrument being drafted with the solemnities and conditions specified, as the substantial form of the protest, under pain of nullity, no other proof than that of the instrument is admissible, because it is the only evidence admitted in law, and because it being a public right it is not licit for private persons nor for courts to substitute nor alter it.

In another opinion of the same court of February 14, 1890, there was established that, a draft having been accepted on the 20th of December, 1881, and January 9, 1882, having been erroneously written therein and immediately erased and substituted by the correct date, this acceptance is not valid, and by reason of the absence of the inclusion in the instrument of protest of this particular the article we annotated is not violated, nor any other article of the same legal tenor.

ART. 505. The legal domicile in which to make the protest shall be—

1. That designated in the draft.

2. In the absence of such designation, the domicile of the payor at the time.

3. In the absence of either, the last at which he was known.

Should the domicile of the person on whom the draft was drawn not appear to be in any of the three places above cited, a neighbor having an office in the place where the acceptance and payment is to be made shall be applied to, with whom the formalities shall be gone through and to whom the copy shall be delivered.

ART. 506. No matter at what time the protest may be made, the notaries shall retain possession of the drafts, without delivering the latter or the certified copy of the protest to the holder, until sunset of the day on which it is made; and if the protest was made for nonpayment, and the payor in the meantime appears in order to satisfy the amount of the draft and the costs of the protest, the payment shall be accepted, the draft being delivered with a memorandum thereon stating that the protest has been paid and canceled.

ART. 507. If the protested draft should contain indications, there shall be included in the protest the demand made of the persons indi-

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cated and their answers and the acceptance or payment, if they should have done so.

In such cases, if the indications are made for the same place, the period for the conclusion and delivery of the protest shall be extended to 11 o'clock a. m. of the following working-day.

If the indications are for a different place the protest shall be closed as if it did not contain any, the holder of the draft being permitted to apply to them within a period not to exceed twice the time required by the mail to reach said place from the first one designated, and may, through a notary, demand payment in their order of the persons in each place, renewing the protest with the same if there should be occasion therefor.

The acceptance of a bill of exchange by the person indicated, in default of the person on whom it is drawn, binds the person who does so for the payment of the draft when it falls due, in accordance with the customs of the place, and in a proper case for the interest or expenses of redraft in accordance with the provisions of the code of commerce. (Opinion of June 13, 1894. *Gaceta* of November 9.)

ART. 508. All the formalities of a protest of a bill of exchange must be drafted in a single instrument, being entered successively in the order they take place.

The notary shall give a certified copy of this instrument to the holder, returning the original draft to him.

ART. 509. No act or instrument can supply the omission and absence of the protest for the preservation of the action which may be instituted by the holder against the persons liable for the legal effects of the draft.

ART. 510. If the person on whom the draft was drawn should become a bankrupt, it may be protested for nonpayment even before it falls due; and after being protested, the holder may make use of his right of action against the persons liable for the legal effects of the draft.

See articles 879 and 908 et seq. of this code.

SECTION NINTH.—*Intervention in the acceptance and payment.*

ART. 511. If after a bill of exchange should be protested for nonacceptance or nonpayment a third person should appear offering to accept or pay the same for the account of the drawer or for the account of any of the indorsers, even though there is no prior mandate to do so, the intervention for the acceptance of payment shall be admitted, one or the other being entered immediately after the protest, under the signature of the person who intervened and that of the notary, the name of the person for whose account the intervention took place being stated in the instrument.

If several persons appear to intervene, the person doing so for the drawer shall be prefered; and if all of them desire to intervene for indorsers, the one who does so for the prior indorser shall be preferred.

ART. 512. The person who intervenes in the protest of a bill of exchange, if he accepts it, shall be liable for its payment in the same manner as if it were drawn on him, being obliged to give notice of its acceptance by the first mail to the person for whom he intervened; and should he pay it, he shall be subrogated to the rights of the holder, complying with the obligations prescribed for the latter, with the following limitations:

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1. If he pays said draft for the account of the drawer, the latter only shall be liable to him for the amount disbursed, the indorsers being free.

2. If he pays it for the account of one of the latter, he shall be entitled to bring an action against the drawer, against the indorser for whose account he intervened, and against the others who precede said indorser in the order of their indorsements, but not against those who may be subsequent.

ART. 513. The intervention in the acceptance shall not deprive the holder of the draft protested of the right to demand of the drawer or of the indorsers the security for the results.

ART. 514. If the person who did not accept a draft, giving rise to a protest thereby, should appear to pay it when it falls due, his payment shall be accepted in preference to that of the person who intervened or wished to intervene for the acceptance or payment; but the expenses caused by the nonacceptance of the draft at the proper time shall be for his account.

ART. 515. A person who intervenes in the payment of a draft affected in any manner, shall not have any further right of action than that which the holder would have against the drawer who did not provide funds at the proper time, or against the person who retains possession of the value of the draft without having made its delivery or reimbursement.

SECTION TENTH.—*Actions which may be instituted by the holder of a bill of exchange.*

ART. 516. In default of the payment of a bill of exchange, presented and protested at the proper time and in the proper manner, the holder shall have a right to demand of the acceptor, of the drawer, or of any of the indorsers the reimbursement for the costs of protest and reexchange; but after an action has been instituted against one of them, it can not be brought against the rest except in the case of the insolvency of the defendant.

See article 487 and articles 518 et seq.

The supreme court in an opinion of December 15, 1880, established as doctrine: That the obligation imposed by the taker of a draft by the clauses "value on account" and "value understood" is subordinated to the form and conditions agreed upon in making the exchange contract, and it is necessary to prove it by other means than by the draft itself, in which it is only indicated.

The same court, in another opinion rendered by its third chamber, February 28, 1885, declared that the judge of the place where a draft was accepted and where it should be paid must take cognizance of a suit to secure execution based on a bill of exchange.

The obligation of the drawer of a bill of exchange which has been protested to pay it must be complied with in the place where its value was delivered. (Opinion of March 9, 1886.)

According to an opinion of October 11, 1889, the article we annotate refers to the suit instituted by the holder of a draft and not to that which may be instituted by an indorser, which is governed by articles 520 and 527 of this code.

The contract of a bill of exchange is consummated by the acceptance of the draft, which places the acceptor under the obligation to pay it, the place for the fulfillment of the obligation being that indicated by the drawer as the domicile of the payor, in which domicile it is to be paid, and, therefore, that the judge of competent jurisdiction to take cognizance of the suits which may arise by reason of the protest is the one of the place where this is done. (Opinion of August 21, 1890.)

The article we annotate, which prohibits an action against the drawer after a suit against one of the indorsers has been instituted and before the insol-

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vency of the latter is proven, is therefore not applicable to cases of bankruptcy. (Opinion of the supreme court of December 31, 1888, and January 2, 1889. *Gacetas* of April 29 and April 30.)

ART. 517. If the holder of a protested draft would direct his action against the acceptor before the drawer and indorsers, he shall notify all of them of the protest through a notary public within the periods mentioned in the fifth section of this title, for the purpose of obtaining their acceptance; and if it is directed against any of the latter a similar notification shall be made within the same periods to the rest.

The indorsers to whom this notification is not made shall be exempted from liability, even when the defendant is insolvent, and the same shall be understood with regard to the drawer who proves that he made the provision of funds at the proper time.

See articles 452, 453, 454, and 520 of this code.

ART. 518. If an execution has been had against the property of the debtor for the payment or reimbursement of a draft, and the holder should have been able to realize only a part of his credit, he may bring an action against the rest for the balance of his account until he is fully reimbursed, in the manner established in article 516.

The same shall be done in case the person proceeded against is declared in bankruptcy, and if all the persons liable for the draft are in similar circumstances, the claimant shall be entitled to recover from each set of assets the corresponding dividend until his credit is totally canceled.

ART. 519. The indorser who pays a protested draft shall subrogate himself to the rights of the holder thereof, viz:

1. If the protest were for nonacceptance, against the drawer and the other indorsers who precede him in order, for the security of the value of the draft, or the deposit in the absence of security.

2. If it were for nonpayment, against the said drawer, acceptor, and prior indorsers for the recovery of the amount of the draft and of all the costs he may have paid.

If the drawer and the indorser both should appear to make the payment, the drawer shall be preferred; and if the indorsers only should appear, the one of a prior date.

See article 513 of this code.

ART. 520. The drawer as well as any of the indorsers of a protested bill of exchange may demand, as soon as they receive notice of the protest, that the holder receive the amount with the legitimate expenses, and deliver to them the draft with the protest and the account of the redraft.

It is not optional for the holder of a bill of exchange to deliver the latter, with or without the account of the redraft, to the indorser who wishes to pay it, nor can he state that no costs were incurred in protesting the same. (Opinion of October 11, 1889.)

See in the fourth paragraph of the addition to article 516 of this code, the opinion, also of October 11, 1889, on account of its relation to the one we annotate.

ART. 521. The action arising from bills of exchange to recover, in the respective cases, of the drawer, acceptors, or indorsers the payment or reimbursement, shall include an attachment, which must be issued, in view of the draft and of the protest, without further

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requisite than the judicial acknowledgment of their signatures by the drawer and indorsers proceeded against. A similar action may be brought against the acceptor to compel him to make the payment.

The acknowledgment of the signature shall not be necessary to carry out the attachment against the acceptor when no charge of forgery has been made in the instrument of protest for nonpayment.

The action including an attachment, must be instituted, when bills of exchange are in question, in the place where they were accepted, which is where they must be paid. (Opinion of February 28, 1885.)

See the last two paragraphs of the addition to article 516 of this code.

ART. 522. The action brought to secure the guaranty or the deposit of the amount of a bill of exchange, in the cases in which it is proper with regard to the provisions of articles 481, 492, and 498 of this code, shall be in accordance with the proceedings prescribed in Book 3, part 2, title 3, of the law of civil procedure, it being sufficient to accompany to the claim in the first case the protest showing the nonacceptance of the draft.

The law of civil procedure of 1881, in force in the Peninsula, in its articles 2128 to 2130, that for Cuba and Porto Rico, articles 2080 to 2091, and that for the Philippines in articles 2049 to 2051, treat "of the attachment and provisional deposit of the amount of a bill of exchange."

ART. 523. Against the actions including attachment by reason of bills of exchange, no further exceptions shall be admitted but those mentioned in the law of civil procedure.

According to article 1465 of the law of civil procedure for the Peninsula, 1463 of that for Cuba and Porto Rico, and 1447 of that for the Philippines, in actions to secure immediate execution of judgments on bills of exchange the following exceptions only shall be admissible: Forgery of the writ of attachment or of the instrument which may have given it the force of such; payment; compensation of net credit which appears from the instrument which includes attachment; prescription and reduction or extension of time for payment thereof.

ART. 524. The amount which a creditor remits or releases a debtor against whom an action has been brought from the payment or reimbursement of a bill of exchange, shall be understood as extended also to the rest who may be liable for the effects of the collection.

ART. 525. The prescription of a protested draft shall not have any effect by reason of nonpresentation, protest, or its notification at the times which have been stated, with regard to the drawer or indorser who, after said periods have elapsed, has balanced the amount of the draft in his accounts with the debtor or reimbursed him with bonds or securities belonging to him.

ART. 526. Bills of exchange protested by reason of nonpayment shall earn interest in favor of the holders thereof from the date of the protest.

With regard to the contents of this article, which correspond to article 548 of the old code, the supreme court established in an opinion of January 18, 1881, the following doctrine: The effects of delay in the fulfillment of commercial obligations begin from the instant the creditor demands payment of the debtor judicially or through a notary.

SECTION ELEVENTH.—*Reexchange and redraft.*

ART. 527. The holder of a protested bill of exchange may recover the amount thereof and the costs of protest and reexchange by drawing a new bill against the drawer or one of its indorsers and attaching to this draft the original one, as well as the certified copy of the

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protest and the account of the redraft, which shall only contain the following clauses:

1. The amount of the bill of exchange protested.
2. Protest costs.
3. Stamp tax for the redraft.
4. Exchange according to the customs of the place.
5. Brokerage of the transaction.
6. Expenses of the correspondence.
7. Loss by reason of the reexchange.

In this account there shall be stated the name of the person on whom the redraft is made.

See in paragraph 4 of the addition to article 516 of this code, the opinion of October 11, 1889, on account of the relation it bears to the one we annotate.

ART. 528. All the items of the redraft shall conform to the usages of the place, and the reexchange to the current rate on the day of the draft. This will be proven by the official quotation on exchange, or by means of a certificate of an official agent or broker, should there be one, and in their absence by that of two recorded merchants.

ART. 529. Only one account or redraft can be made for each bill of exchange, which account shall be paid by the indorsers of one or the other until it is extinguished by means of the reimbursement of the drawer.

More than one reexchange shall not be charged, and the amount thereof shall be graduated by increasing or reducing the amount due from each person, according as to whether the paper on the place to which the redraft is addressed is negotiated in that of its domicile with a premium or with discount, which circumstance shall be proven by means of a certificate of an agent, broker, or merchant.

ART. 530. The holder of a redraft can not demand legal interest thereon until after the day he demands payment of the person who is to pay it, in the manner prescribed in article 63 of this code.

TITLE XI.—DRAFTS, BILLS, AND PROMISSORY NOTES PAYABLE TO ORDER, AND CHECKS.

SECTION FIRST.—*Drafts, bills, and promissory notes payable to order.*[a]

ART. 531. The drafts, bills, and promissory notes payable to order must contain—

1. The specific name of the draft, bill, or promissory note.
2. The date of issue.

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[a] With regard to this subject, the supreme court has rendered several opinions, the doctrine of which is of more or less general application and of which we shall indicate the most important:

In the opinions of June 28, 1859, and May 19, 1870, it established: That promissory notes and their securities must conform to the character of the contracts which it was desired to insure or guarantee in making them, the former being subject to the natural rules governing said contracts.

In the opinion of March 28, 1860: That the bills or promissory notes, although they produce the same obligations and effects of drafts, are not absolutely identical therewith.

In another one of November 14, 1862: That the principal obligation of the drawer, as well as the subsidiary one of the person guaranteeing its fulfillment, are always common; and in that of March 18, 1872: That when the promissory notes can not be removed from a bill of sale they can not be considered as exchange instruments, because to consider them such it is necessary that they be independent of the sale and not have any relation thereto, unless they are the consequence of the novation of the contract.

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3. The amount.
4. The time of payment.
5. The person to whose order the payment is to be made, and, in drafts, the name and domicile of the person against whom they are drawn.
6. The place where the payment is to be made.
7. The origin and kind of value they represent.
8. The signature of the person making the draft, and, in bills or promissory notes, the person who contracts the obligation to pay them.

Bills which are to be paid in a place other than that of the residence of the payor, shall indicate a domicile for the payment.

The competent judge to take cognizance of a suit instituted with regard to a promissory note is the one of the place where it is to be paid, even though indorsements may have been placed thereon which will not alter the obligation in any manner whatsoever. (Opinion of July 10, 1889.)

In an opinion of the supreme court, rendered on November 14, 1872, there is established as doctrine: That promissory notes to order which do not contain the requisites of the name and domicile required in drafts shall not be considered commercial, and are reduced to the class of simple promises to pay, of effect only from the point of view of the common law; and in that of December 12, 1889, there is stated that commercial promissory notes are governed by the code of commerce, even though the persons interested are not merchants, and the drawer can not exempt himself from the payment by making use of the exception *non numerata pecunia*, which is not applicable to these instruments. (*Gaceta* of January 22, 1890.)

ART. 532. Drafts payable to order between merchants and the bills or promissory notes likewise payable to order, which arise from commercial transactions, shall produce the same obligations and effects as bills of exchange, except with regard to acceptance, which is a quality of the latter only.

The bills or promissory notes which are not payable to order shall be considered simple promises to pay subject to the common law or the commercial law according to their nature, excepting the provisions contained in the following title.

The suspension of payments made by the indorsers and drawers of a promissory note which combines the requisites mentioned in the article we annotate, in order to be considered commercial, permits the holder of the same who appears at the same time as the legal creditor of the drawer and of the indorsers in suits of suspension instituted by the same; and the opinion which does not acknowledge this violates the provisions of this article in relation with those of articles 516, 518, and 524. (Opinion of February 26, 1892. *Gaceta* of April 16.)

Promissory notes payable to order referred to in this article are not those the amount of which is to be devoted to commerce, but those which arise from commercial transactions, the latter only having the judicial value of commercial instruments. (Opinion of November 24, 1894. *Gacetas* of February 26 and 27, 1895.)

The same doctrine is contained in the opinion of April 10, 1894, *Gaceta* of September 21, inserted as an addition to article 311.

ART. 533. The indorsements on drafts and promissory notes payable to order must contain the same statements as those on bills of exchange.

SECTION SECOND.—*Checks.*

ART. 534. The order to pay, known in commerce by the name of check, is an instrument which permits the maker to withdraw for his benefit or for that of a third person the whole or part of the funds he may have at his disposal in the hands of the depositary.

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The issue of a check to which the foregoing article refers or that of a stub of a current account, treated of in article 543, is a commercial act, and the instrument arising therefrom, or which it represents, must necessarily have a commercial character for all legal effects, and its forgery shall be punished in accordance with article 315 of the penal code and not by article 548 of the same. (Opinion of the second chamber of the supreme court of June 17, 1890. *Gaceta* of October 22.)

ART. 535. The check must contain:

The name and the signature of the maker, and the name of the person on whom it is drawn and his domicile, amount and date of issue, which must be written out, and if payable to bearer, to a determined person, or to order; in the latter case it shall be transferable by indorsement.

ART. 536. It may be drawn in the same place it is to be paid, or in a different place; but the maker shall be obliged to previously have the funds on deposit with the person on whom it is drawn.

ART. 537. The holder of a check must present it for payment within five days of its issue, if drawn in the same place, and within eight days if drawn in another one.

The holder who allows this period to elapse, shall lose his right of action against the indorsers as well as against the maker, if the funds deposited with the person on whom it is drawn should disappear because the latter has suspended payments or is a bankrupt.

ART. 538. The period of eight days fixed in the foregoing article for checks issued from place to place shall be understood as extended to twelve days after its date for those drawn abroad.

ART. 539. Payment of a check shall be demanded of the depositary on presentation.

The person to whom payment is made shall state in his receipt his name and the date of payment.

ART. 540. Duplicates of checks can not be issued unless the originals have been previously canceled after they have lapsed and the agreement thereto of the depositary has been obtained.

ART. 541. The maker or any legal holder of a check shall be entitled to indicate therein that it be paid to a certain banker or institution, which he shall do by writing across the back the name of said banker or institution, or only the words "and company."

The payment made to a person other than the banker or institution shall not exempt the person on whom it is drawn, if the payment was not correctly made.

ART. 542. The provisions contained in this code relating to the joint liability of the maker and indorsers, and to protests, as well as to the exercise of the actions arising from bills of exchange, shall be applicable to these instruments.

ART. 543. The foregoing provisions, in so far as they are applicable, shall govern pay orders known by the name of stubs, in current account, of banks or institutions.

See the note to article 534.

In an opinion of June 5, 1886, the supreme court declared that in accordance with the regulations of the Bank of Spain, in order that stubs of current accounts and orders for transfers may be carried out, they must be signed by the persons in whose name the account stands, the amount which they represent must be written out before the signature, and said signature must be compared with the corresponding one of the register of current accounts, and, therefore, the bank shall be liable for the loss caused by the payment of a stub, the signature of which was a forgery and in which the amount was not repeated, written out, as is stated.

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TITLE XII.—INSTRUMENTS PAYABLE TO BEARER, AND FORGERY, ROBBERY, THEFT, OR LOSS OF THE SAME.

SECTION FIRST.—*Instruments payable to bearer.*

ART. 544. All instruments payable to order, treated of in the foregoing title, may be issued payable to bearer, and shall, the same as the former, include an attachment from the day they fall due, without further requisite than the acknowledgment of the signature of the person liable for the payment.

The due date shall be counted according to the rules established for instruments issued payable to order, and against the action to secure judgment no exceptions but those mentioned in article 523 shall be admitted.

See article 1464 of the law of civil procedure for the Peninsula, as well as articles 1465, 1462, and 1463 of that for Cuba and Porto Rico, and articles 1446 and 1447 of that for the Philippines.

ART. 545. Other instruments payable to bearer, be they either the ones mentioned in article 68 or bank notes, shares, or obligations of other banks, mortgage loan, agricultural loan, or of associations handling public securities, railroad companies, companies of public works, industries or commercial associations, or of any other kind whatsoever, issued in accordance with the laws and provisions of this code, shall produce the following effects:

1. They shall include attachment, as well as their coupons, from the day the respective obligation falls due, or when they are presented, if no due date has been affixed.

2. They shall be transferable by the simple delivery of the instrument.

3. They are not subject to restitution if they were negotiated on exchange with the intervention of a licensed agent, and where there is no such agent with the intervention of a notary public or of a commercial broker.

The rights and actions of the legitimate owner against the vendor or other persons liable according to the laws for the acts which deprived him of the possession and ownership of the instruments sold, shall be reserved.

Although No. 2 of the article we annotate declares that instruments payable to bearer are transferable by the simple delivery of the instrument, it adds in the third that they shall not be subject to restitution if they were negotiated in the manner stated therein, and in the latter part of said No. 3 it reserves the rights and actions of the legitimate owner agains the vendor or other persons liable according to law for the acts which deprived him of the possession and ownership of the instruments sold; which demonstrates that the novation sanctioned in these precepts is reduced to making the instruments acquired by reason of said negotiation not subject to restitution, without extending said privilege to those obtained by other means, which, therefore, are subject to the general rules of law. (Opinion of February 9, 1882. *Gaceta* of March 15.)

The exception referred to in No. 3 of this article shall not be admissible in a suit if the document by which the acquisition is proved does not contain a note to the effect that the act or contract celebrated subsequently to April 4, 1893, has been submitted to the payment of the tax on property rights. (Royal decree of the same date. *Gaceta* of the 6th.)

Although the instruments of the public debt, being payable to bearer, can be transferred by their mere delivery, and the simple possession of the instrument implies its ownership, this does not prevent that, in order to prevent the event of a restitution and for a greater guaranty and security of the public credit, its acquisition be made to appear in the special manner prescribed in

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the law of March 30, 1861, in that of August 29, 1873, and in article 543, No. 3, of the code of commerce, without prejudice to the general and common effects of the kind of instruments payable to bearer, and to the consequent risk run by the person who does not comply in their negotiation with the conditions of guaranty which the exchange agent, or in his absence the commercial broker or notary, secure with their intervention. The provisions of articles 548, 560, and 561 of the code of commerce, do not modify in any manner whatsoever nor can they modify, according to the text of article 566, the conditions with which instruments payable to bearer issued by the State are to be negotiated, in order not to be subject to restitution, and therefore said articles can only be applied, if after complaining of the loss or theft of the instruments, they have been negotiated through an agent, but not when this did not take place. The supreme court declared in accordance with articles 32 of the law of February 8, 1854, that loans secured by public instruments are exchange transactions which are made with the intervention of exchange agents, and that instruments payable to bearer are not subject to restitution provided they are negotiated on exchange with the legal formalities, where there is an exchange, and where there is none, that a notary public or commercial broker mediated in the transaction. The intervention of an exchange agent, as well as that of a commercial broker and that of a notary in the negotiation of the public instruments of the debt, can not take place in any manner whatsoever except in that prescribed, either in the exchange law or in the code of commerce, or in the notarial law, according to the class of official who took part therein, because said form constitute at the same time the guaranty of the intervention and is the basis of all the liabilities as well as of all the effects which arise; it is not sufficient, therefore, in order to consider a negotiation of securities of the State through any of said officials to be considered as consummated, by reason of the circumstance of an agent or broker having taken part therein in a private capacity, without authenticating nor drafting any instrument whatsoever, nor making the proper entry in their books. (Opinion of May 20, 1895. *Gaceta* of September 10.)

ART. 546. The holder of an instrument payable to bearer shall have a right to compare it with the originals whenever he considers it advisable.

SECTION SECOND.—*Robbery, theft, or loss of instruments of credit and those payable to bearer.*

ART. 547. The following shall be instruments of credit payable to bearer for the effects of this section, according to the cases:

1. Instruments of credit against the State, provinces, or municipalities, legally issued.

2. Those issued by foreign countries the quotation of which has been authorized by the Government, on the recommendation of the board of directors of the association of agents.

3. Instruments of credit payable to bearer, of foreign enterprises, established in accordance with the law of the State to which they belong.

4. Instruments of credit payable to bearer issued in accordance with the laws of their association by national establishments, associations, or enterprises.

5. Those issued by private parties, provided they are mortgage or are sufficiently secured.

ART. 547. (Cuba and Porto Rico.) The following shall be instruments of credit payable to bearer, for the effects of this section, according to the cases:

1. Instruments of credit against the State, *the islands of Cuba and Porto Rico*, the provinces and municipalities *of the nation* legally issued.

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2. Those issued by foreign countries the quotation of which has been authorized by the Government, on the recommendation of the board of directors of the association of agents.

3. Instruments of credit payable to bearer, of foreign enterprises, established in accordance with the law of the State to which they belong.

4. Instruments of credit payable to bearer issued in accordance with the laws of their association by national establishments, associations, or enterprises.

5. Those issued by private parties, provided they are mortgage or are sufficiently secured.

ART. 548. The dispossessed owner, no matter for what cause it may be, may apply to the judge or court of competent jurisdiction, asking that the principal, interest, or dividends due or about to become due, be paid a third person, as well as in order to prevent the ownership of the instrument from being transferred to another person, or he may request that a duplicate be issued him.

The judge or court exercising jurisdiction in the district in which the debtor establishment or person is situated, shall be of competent jurisdiction.

See the opinion of May 30, 1895, in the addition to article 545.

ART. 549. In the complaint made to the judge or court by the dispossessed owner he must state the name, character, nominal value, number if it should have one, and the series of the instrument; and furthermore, if it were possible, the time and place he acquired ownership and the manner of acquisition thereof, the time and place where he received the last interest or dividends, and the circumstances attending the dispossession.

The person dispossessed, in making the complaint, shall indicate within the district in which the judge or court of competent jurisdiction exercises the domicile where he is to be served with all notifications.

The provisions of article 104 of this code are closely related to the provisions of the foregoing one, as well as to articles 56 and 57 of the regulations for the organization and government of commercial exchanges referred to in both, the mode of procedure in order to inform agents of the effects of their civil liability for the instruments and securities they negotiate being therein established.

ART. 550. If the complaint relates only to the payment of the principal or of the interest or dividends due or about to fall due, the judge or court, when the legitimacy of the acquisition of the instrument has been proved, must admit said complaint, immediately ordering—

1. That the complaint be immediately published in the *Gaceta de Madrid*, in the *Boletin Oficial* of the province, and in the *Diario Oficial de Avisos* of the place, should there be one, fixing a short period within which the holder of the instrument may appear.

2. That it be communicated to the managing office of the institution which issued the instrument, or to the association or private person from whom it originates, in order that the payment of the principal or interest may be suspended.

ART. 550. (Cuba and Porto Rico.) If the complaint should relate only to the payment of the principal or interest of dividends which are due or are about to become due, the judge or court, when the legality of the acquisition of the instrument has been proved, must admit said complaint, immediately ordering—

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1. That the complaint be immediately published in the *Gaceta Oficial of the island of Cuba or in that of Porto Rico*, in a proper case, in the *Boletin Oficial* of the province, in the *Diario de Avisos* of the place, should there be one, or in the absence thereof in one or two of the newspapers having the largest circulation, in the opinion of the judge, fixing a short period within which the holder of the instrument may appear.

2. That it be communicated to the managing office of the institution which issued the instrument, or to the association or private person from whom it originates, in order that the payment of the principal or interest may be suspended.

ART. 551. The request shall be heard in the presence of a member of the department of public prosecution, in the manner prescribed in the law of civil procedure for interlocutory issues.

The provisions of the law of civil procedure referred to in the article we annotate are contained in title 3, book 2, of the said law, or in articles 741 to 761.

ART. 552. After one year has elapsed since the complaint without anybody contradicting it, and if in the interval the dividends have been distributed, the complainant may request the judge or court for authority not only to recover the interest or dividends due or about to become due, in the proportion and means of their collectibility, but also the principal of the instruments, if it is demandable.

ART. 553. After the authorization has been granted by the judge or court, the person dispossessed must, before receiving the interest or dividends, or the principal, give sufficient security to cover the amount of the annuities recoverable, and, furthermore, twice the amount of the last annuity due.

After two years have elapsed from the date of the authorization without the complainant being contradicted, the guaranty shall be canceled.

If the complainant does not wish to or can not give the security, the debtor association or private person may request the deposit of the interest or dividends past due or of the principal recoverable, and to receive after the two years the securities deposited if there be no objection.

ART. 554. If the principal should be recoverable after the authorization, it may be demanded under security or the deposit may be required.

After five years have elapsed, without opposition, from the date of the authorization, or ten from the date it was demandable, the person dispossessed may receive the securities deposited.

ART. 555. The solvency of the guaranty shall be passed upon by the judges and courts.

The complainant may give security in bonds of the State, recovering them at the termination of the period fixed for the guaranty.

ART. 556. If the complaint relates to coupons payable to bearer separated from the instrument, and the claim should not be overruled, the claimant may recover the amount of the coupons after three years have elapsed, counted from the date of the judicial declaration admitting the complaint.

The claim referred to in this article can not be that mentioned in the second paragraph of article 554, but that instituted by the complainant in accordance with the provisions of article 548.

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ART. 557. The payments made to the person dispossessed in accordance with the rules above established exempt the debtor from all liability; and a third person who considers himself injured shall only retain the right of personal action against the claimant who acted without just cause.

ART. 558. If, before the exemption of the debtor, a third holder should appear with the instruments the subject of the complaint, the former must retain possession thereof and inform the judge or court and the first claimant, at the same time stating the name, residence, or manner in which the third holder may be found.

The appearance of a third person shall suspend the effects of the claim until it is decided by the judge or court.

With regard to the manner of drafting and addressing the complaints referred to in this article, see the provisions of articles 57 and 59 of the exchange regulations in force of December 21, 1885.

ART. 559. If the purpose of the complaint should be to prevent the negotiation or transfer of instruments which can be quoted, the person dispossessed may address himself to the board of directors of the association of agents, complaining of the robbery, theft, or loss, and accompanying thereto a memorandum giving the series and numbers of the instruments lost, time of their acquisition, and manner in which they were acquired.

The board of directors, on the same day of the exchange or on the following one, shall affix a notice to the board, and shall announce at the opening of the exchange the complaint made, and also advise the other boards of directors of exchanges of said complaint.

A similar notice shall be inserted at the expense of the complainant in the *Gaceta* of Madrid, in the *Boletin Oficial* of the province, and in the *Diario Oficial de Avisos* of the respective town.

ART. 559. (Cuba and Porto Rico.) If the purpose of the complaint should be to prevent the negotiation or transfer of instruments which can be quoted, the person dispossessed may address himself to the board of directors of the association of agents, *and, in the absence of the latter, to the board of the association of commercial brokers*, complaining of the robbery, theft, or loss, and accompanying thereto a memorandum giving the series and numbers of the instruments lost, time of their acquisition, and manner in which they were acquired.

The board of directors, on the same day of the exchange or on the following one, shall affix a notice to the board, and shall announce at the opening of the exchange the complaint made, and also advise the other boards of directors of exchanges of said complaint.

A similar notice shall be inserted, at the expense of the complainant, in the *official Gaceta of the island of Cuba or in that of Porto Rico, in a proper case*, in the *Boletin Oficial* of the province, and in the *Diario de Avisos* of the respective town, *should there be one, or in one or two of the newspapers having the largest circulation, in the opinion of the judge.*

ART. 560. The negotiation of securities lost or stolen, which take place after the announcements referred to in the foregoing article, shall be void, and the person acquiring the same shall not enjoy the right of remaining in undisturbed possession thereof; but the right of the third person against the vendor and against the agent who took part in the transaction shall be reserved.

See the opinion of May 30, 1895, in the addition to article 545.

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ART. 561. In the period of nine days the person who complained of the robbery, theft, or loss of the instruments must obtain the corresponding decree of the judge or court, ratifying the prohibition to negotiate or alienate the said instruments.

If this decree should not be communicated to the board of directors within the period of nine days, the board shall annul the announcement, and the transfer of the instruments which may subsequently be made shall be valid.

Let it not be forgotten that when the announcements mentioned in article 559, referred to in articles 560 and 561, are made by telegraph, the provisions of article 58 of the Exchange Regulations cited must be complied with.

ART. 562. After five years have elapsed, to be counted from the date of the publications made by virtue of the provisions of articles 550 and 559, and from that of the ratification of the judge or court referred to in article 561, without any objection to the complaint having been made, the judge or court shall declare the nullity of the instrument stolen or lost, and shall communicate it to the official managing office, association, or private person from whom it came, ordering the issue of a duplicate to the person who appears to be its legal owner.

If within the five years a third complainant should appear, the period shall be suspended until the decision of the judges or courts is rendered.

ART. 563. The duplicate shall bear the same number as the original instrument; it shall state that it was issued in duplicate; it shall produce the same effects as the former, and shall be negotiable under the same conditions.

The issue of the duplicate shall annul the original instrument, and this shall be stated in the entries or records relating thereto.

ART. 564. If the complaint of the person who suffered the loss should be for the purpose of recovering the principal, dividends, or coupons, and also to prevent the negotiation or transfer on exchange of the instruments which can be quoted thereon, the rules established for each one of the foregoing articles shall be observed, according to the cases.

See the provisions contained in the second paragraph of article 56 of the exchange regulations cited.

ART. 565. Notwithstanding the provisions contained in this section, if the person dispossessed should have acquired the instruments on exchange, and if he attaches to the complaint the certificate of the agent in which the instruments are detailed or specified in such manner that they can be identified before applying to the judge or court, he may do so to the debtor institution or person, and even to the board of directors of the association of agents objecting to making the payment and requesting that the proper notices be issued. In such case the debtor institution or person and the board of directors shall be obliged to act as if the court or judge had notified them of the admission of the complaint and that it has been passed upon.

If the judge or court, within the period of one month, does not order the retention or publication, the complaint made by the person dispossessed shall have no effect, and the debtor institution or person and the board of directors shall be exempted from all liability.

With regard to the provisions of this article, see article 550 of this code and article 57 of the exchange regulations in force.

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ART. 566. The foregoing provisions shall not be applicable to bank notes of the Bank of Spain, nor to the notes of the same kind issued by institutions subject to the same rule, nor to instruments payable to bearer issued by the State, which are governed by the special laws, decrees, or regulations.[a]

The bonds of the public debt of Spain are instruments payable to bearer, which are governed by the special laws of their issue, and by the decrees which may be issued thereon by the executive power for a better understanding and application of the said law, and therefore, as prescribed by the article we annotate, the provisions of section second, title 12, book 2, of this code, are not applicable to the questions which may arise with relation thereto. (Opinion of June 23, 1892. *Gaceta* of August 27.)

The bonds of the public debt must be considered as included in the provisions of the article we annotate, because they are governed by special laws, decrees, or regulations, among which are included the law of March 30, 1861, and the order of the Government of the Republic of May 26, 1873, which prevent the State from placing any obstacle whatsoever to the free circulation of instruments without violating the obligation contracted with the holder, and therefore the retention and transmission of bonds of the perpetual debt at 4 per cent interior or exterior to a court by virtue of a request from the same is not proper, by reason of their being considered as evidence of a robbery. (Royal order of March 4, 1893. *Gaceta* of April 5.)

ART. 566. (Cuba and Porto Rico.) (See the note to the text of this article for the Peninsula.)

ART. 566. (Philippines.) The foregoing provisions shall not be applicable to the bank notes of the *Spanish Philippine Bank* (Banco Español Filipino), nor to notes of the same kind issued by institutions subject to the same rule, nor to the instruments payable to bearer issued by the State, which are governed by special laws, decrees, or regulations.

TITLE XIII.—LETTERS OF CREDIT.

ART. 567. Letters of credit are those issued by one merchant to another, or for the purpose of attending to a commercial transaction.

ART. 568. The essential conditions of letters of credit shall be—

1. To be issued in favor of a determined person and not to order.

2. To be limited to a fixed and specified amount or to one or more indeterminate amounts, but all included in a maximum sum the limit of which must be exactly stated.

Letters of credit which do not have one of these conditions shall be considered simply as letters of recommendation.

ART. 569. Who issues a letter of credit shall be liable to the person on whom it was issued for the amount paid by virtue of the same within the maximum fixed therein.

Letters of credit can not be protested, even when not paid, nor can the holder thereof acquire any right of action for said nonpayment against the person who issued it.

The payor shall have a right to demand the proof of the identity of the person in whose favor the letter of credit was issued.

ART. 570. The donor of a letter of credit may annul it, informing the bearer and the person to whom it is addressed of said revocation.

ART. 571. The holder of a letter of credit shall pay the donor the amount thereof without delay.

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[a] Although it is not stated in the corresponding amendment for the islands of Cuba and Porto Rico, a similar modification as made for the Philippines should be understood as made for said islands.

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Should he not do so an action including attachment may be brought to recover said amount with the legal interest and the current exchange in the place where the payment was made on the place where it was repaid.

ART. 572. If the holder of the letter of credit does not make use thereof in the period agreed upon with the donor of the same, or in the absence of a fixed period, within six months from its date, in any place in Europe and within twelve months outside thereof, it shall be void in fact and in law.[a]

ART. 572. (Cuba and Porto Rico.) See the note to this article for the Peninsula.

ART. 572. (Philippines.) If the holder of a letter of credit does not make use thereof within the period agreed upon with the donor of the same, or, in the absence of a fixed period, within six months from its date in any point of the *Philippine Islands*, and within twelve months outside thereof, it shall be void in fact and in law.

Book Third.—MARITIME COMMERCE.

TITLE FIRST.—VESSELS.[b]

ART. 573. Merchant vessels constitute property which may be acquired and transferred by any of the means recognized by law. The acquisition of a vessel must be included in a written instrument, which shall not produce any effect with regard to third persons if not recorded in the commercial registry.

The ownership of a vessel shall also be acquired by the possession thereof in good faith for three years, with a good title duly recorded.

In the absence of any of these requisites, uninterrupted possession for ten years shall be necessary in order to acquire ownership.

A captain can not acquire the ship he is in command of by reason of prescription.

A freight vessel shall be considered as such when the number of passengers is smaller than the crew. (Royal order of June 26, 1890.)

With regard to the reference made as to the manner of proving the acquisition of a vessel, there must be taken into consideration, besides the provisions contained in this article, the provisions of articles 6 to 11 of the royal decree of November 7, 1876, according to which it is the duty of notaries public to execute the instruments referring to vessels at all points where the *Escribanias de Marina*, abolished by this decree, are vacant.

See articles 22 and 578 of this code.

ART. 574. The builders of vessels may employ the material and follow with regard to their construction and rigging the system which is most convenient to their interests. Ship agents and seamen shall subject themselves to the provisions of the laws of the public administration on navigation, customs, health, safety of the vessels, and other similar provisions.

ART. 575. Part owners of vessels shall enjoy the right of option of purchase and withdrawal in sales made to other persons; but they

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[a] No amendment or explanation has been made in the modification of this article for Cuba and Porto Rico, and we are of the opinion that an amendment similar to that for the Philippines must be considered as made.

[b] See articles 45 to 56 of the regulations for the organization and government of the commercial registry of December 21, 1885.

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can only exercise it within the nine days following the record of the sale in the registry and paying cash.

See the provisions of article 592.

ART. 576. There shall always be understood as included in the sale of a vessel its rigging, tackle, stores, and engine, if it is a steamer, belonging thereto, and which are at the time in the possession of the vendor.

There shall not be considered as included in the sale the arms, munitions of war, provisions, nor fuel.

The vendor shall be under the obligation to deliver to the purchaser a certificate of the record of the vessel in the registry up to the date of the sale.

ART. 577. If the alienation of the vessel should take place while said vessel is on a voyage, the purchaser shall receive all the freights it earns from the time it received its last cargo, and the payment of the crew and other persons which go to make up its complement shall be paid by the same for said voyage.

If the sale takes place after the arrival of the vessel at the port of its destination, the freights shall belong to the vendor and he shall pay the crew and other persons which go to make up its complement, unless there is an agreement to the contrary in either case.

ART. 578. If, the steamer being on a voyage or in a foreign port, her owner or owners should voluntarily alienate her, either to Spaniards or to foreigners domiciled in the capital or in a port of another country, the bill of sale shall be executed before the consul of Spain of the port where she terminates her voyage, and said instrument shall have no effect with regard to third persons if it is not entered in the registry of the consulate. The consul shall immediately forward a true copy of the bill of sale of the vessel to the commercial registry of the port where said vessel is entered and registered.

In every case the alienation of the vessel must be stated, indicating whether the vendor receives the full price or part thereof, or whether he retains any credit in said vessel in full or in part. In case the sale is made to a Spaniard, this fact shall be stated in the certificate of navigation.

When, the ship being on a voyage, it should be rendered useless for navigation, the captain shall apply to the judge or court of competent jurisdiction of the port of arrival, should it be Spanish; and should it be a foreign port, to the consul of Spain, should there be one, or to the judge, or court, or local authority in the absence of the former; and the consul, or the judge, or court, or in their absence, the local authority, shall order an examination of the vessel to be made.

If the consignee or the underwriter should reside at said port, or should have representatives there, they must be cited in order to take part in the proceedings for the account of whom it may concern.

The provisions of the third paragraph of this article are in accordance and a complement to rule 6 of article 2161 of the law of civil procedure for the Peninsula, 2122 of that for Cuba and Porto Rico, and 2082 of that for the Philippines.

ART. 579. After the damage to the vessel has been proven as well as the impossibility of her being repaired to continue the voyage, her sale at public auction shall be ordered, subject to the following rules:

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1. The hull of the vessel, her rigging, engines, stores, and other articles shall be appraised after an inventory, said proceedings being brought to the notice of the persons who may wish to take part in the auction.

2. The order or decree ordering the auction to be held shall be posted in the usual places, and shall be advertised in the newspapers of the port where said auction is to be held, should there be any, and in the other newspapers determined by the court.

The period which may be fixed for the auction shall not be less than twenty days.

3. These advertisements shall be repeated every ten days, and their insertion shall be stated in the proceedings.

4. The auction shall be held on the day fixed, with the formalities prescribed in the common law for judicial sales.

5. If the sale should take place when the vessel is in a foreign country, the special provisions governing such cases shall be observed.

With regard to the procedure, see rules 6 and 7 of article 2161, of the law of civil procedure for the Peninsula, 2122 of the same amended for Cuba and Porto Rico, and 2082 of that for the Philippines.

ART. 580. In all judicial sales of vessels for the payment of creditors, the following shall have preference in the order stated:

1. The credits in favor of the public treasury which are accounted for by means of a judicial certificate of the competent authority.

2. The judicial costs of the proceedings, according to an appraisement approved by the judge or court.

3. The pilotage charges, tonnage dues, and the other sea or port charges, proven by means of proper certificates of the officers intrusted with the collection.

4. The salaries of the caretakers and watchmen of the vessel and any other expense connected with the preservation of said vessel, from the time of arrival until her sale, which appear to have been paid or are due by virtue of a true account approved by the judge or court.

5. The rent of the warehouse where the rigging and stores of the vessel have been taken care of, according to contract.

6. The salaries due the captain and crew during their last voyage, which shall be vouched for by virtue of the liquidation made from the shipping articles and account books of the vessel, approved by the chief of the bureau of merchant marine where there is one, and in his absence by the consul, or judge, or court.

7. The reimbursement for the goods of the freight the captain may have sold in order to repair the vessel, provided the sale has been ordered by a judicial instrument executed with the formalities required in such cases, and recorded in the certificate of the registry of the vessel.

8. The part of the price which has not been paid the last vendor, the credits pending for the payment of material and work in the construction of the vessel, when it has not navigated, and those arising from the repair and equipment of the vessel and its provisioning with victuals and fuel during its last voyage.

In order that said credits may enjoy the preference contained in this number, they must appear by contracts recorded in the commercial registry, or if they were contracted for the vessel while on a voyage and said vessel has not returned to the port where she is registered,

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they must be proven with the authority required for such cases and entered in the certificate of the record of said vessel.

9. The amounts borrowed on bottomry bonds before the departure of the vessel, proven by means of the contracts executed according to law and recorded in the commercial registry, the amounts borrowed during the voyage with the authority mentioned in the foregoing number, filling the same requisites, and the insurance premium, proven by the policy of the contract or certificate taken from the books of the broker.

10. The indemnity due the shippers for the value of the goods shipped, which were not delivered to the consignees, or for averages suffered for which the vessel is liable, provided either appear in a judicial or arbitration decision.

See articles 52 et seq. of the commercial registry regulations, and articles 603, 667, 704, 730, 809, No. 4, and 811 No. 10, of this code.

The credits referred to in Nos. 7 and 10 of this article shall have preference over the marine mortgage, without requiring to be recorded in the commercial registry. (Article 31 of the marine mortgage law.)

ART. 581. If the proceeds of the sale are not sufficient to pay all the creditors included in one number or grade, the amount shall be divided among them pro rata.

ART. 582. After the bill of the judicial sale at auction has been executed and recorded in the commercial registry, all the other liabilities of the vessel in favor of the creditors shall be considered canceled.

But if the sale should have been voluntary, and took place while the vessel was on a voyage, the creditors shall retain their rights against the vessel until her return to the port of her registry, and three months after the record of sale in the commercial registry, or after her arrival.

With regard to the record, see articles 54 et seq. of the organic regulations for the commercial registry.

ART. 583. If the ship being on a voyage the captain should find it necessary to contract one or more of the obligations mentioned in Nos. 8 and 9 of article 580, he shall apply to the judge or court if he is in Spanish territory, and otherwise to the consul of Spain, should there be one, and in his absence to the judge or court or to the proper local authority, presenting the certificate of the registry of the vessel treated of in article 612, and the instruments proving the obligation contracted.

The judge or court, the consul or the local authority in a proper case, in view of the result of the proceedings instituted, shall make a temporary memorandum in the certificate of their result, in order that it may be recorded in the registry when the vessel returns to the port of its registry, or so that it can be admitted as a legal and preferred obligation in case of sale before the return, by reason of the sale of the vessel by virtue of a declaration of unfitness to navigate.

The lack of this formality shall make the captain personally liable for the credits which may be injured by his fault.

See articles 50 et seq. of the commercial registry regulations of December 21, 1885, and the notes to articles 610 and 611 of this code.

ART. 584. The vessels subject to the liability for the credits mentioned in article 580 may be attached and judicially sold in the manner prescribed in article 579, in the port in which they are, at the instance

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of any of the creditors; but if they should be freighted and ready to sail the attachment can not take place except for debts contracted by reason of the preparation and provisioning of the vessel for said voyage, and even then the attachment shall cease if any person interested in her sailing should give bond for the return of the vessel within the period fixed in the certificate of navigation, and if it should not return within said period, even were the delay caused by force majeure, the person giving the bond is bound to pay the debt in so far as it may be legal.

For debts of any other kind whatsoever not included in the said article 580, the vessel can only be attached in the port of her registry.

See articles 589, 690, No. 4, and article 755, No. 11, of this code.

ART. 585. For all purposes of law not modified or restricted by this code, vessels shall be considered as personal property.

According to the provisions of the first article of the marine mortgage law of August 21, 1893, merchant vessels may be the subject of mortgage, in accordance with the provisions thereof.

For this purpose only such vessels shall be considered real estate, the article we annotate being considered as amended to this effect.

TITLE II.—PERSONS WHO TAKE PART IN MARITIME COMMERCE.

SECTION FIRST.—*Owners of vessels and ship agents.*

ART. 586. The owner of a vessel and the agent shall be civilly liable for the acts of the captain and for the obligations contracted by the latter to repair, equip, and provision the vessel, provided the creditor proves that the amount claimed was invested therein.

By agent is understood the person intrusted with the provisioning of a vessel, or who represents her in the port in which she happens to be.

ART. 587. The agent shall also be civilly liable for the indemnities in favor of third persons which arise from the conduct of the captain in the care of the goods which the vessel carried; but he may exempt himself therefrom by abandoning the vessel with all her equipments and the freight he may have earned during the trip.

The article we annotate is related to article 590 of this code.

ART. 588. Neither the owner of the vessel nor the agent shall be liable for the obligations contracted by the captain if the latter exceeds his powers and privileges which are his by reason of his position or should be granted him by the former.

However, if the amounts claimed were made use of for the benefit of the vessel, the owner or agent shall be liable.

ART. 589. If two or more persons should be part owners of a merchant vessel, an association shall be presumed as established by the part owners.

This association shall be governed by the resolutions of a majority of the members.

A majority shall be the relative majority of the voting members.

If there should be only two part owners, in case of disagreement the vote of the member having the largest interest shall be decisive. If the interests are equal, it shall be decided by lot.

The representation of the smallest part in the ownership shall have one vote; and in proportion the other part owners as many votes as they have parts equal to the smallest one.

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A vessel can not be detained for the private debts of a part owner, nor can she be attached, nor an execution made upon her in entirety, but the proceedings shall be limited to the interest the debtor may have in the vessel, without interfering with her navigation.

When the ownership of a vessel is vested in two or more persons, in order to create a mortgage on the same, it shall be necessary that a resolution be adopted by all the part owners or by a majority thereof, said majority to be computed in the manner fixed in the article we annotate. (Article 3 of the marine mortgage law.)

See the note to article 594 of this code.

ART. 590. The part owners of a vessel shall be civilly liable, in the proportion of their contribution to the common fund, for the results of the acts of the captain, referred to in article 587.

Each part owner may exempt himself from this liability by the abandonment before a notary [a] of the part of the vessel belonging to him.

See article 619 of the code.

ART. 591. All the part owners shall be liable, in proportion to their respective ownership, for the expenses of repairs to the vessel, and for other expenses which are incurred by virtue of a resolution of the majority.

They shall likewise be liable in the same proportion for the expenses of maintenance, equipment, and provisioning of the vessel, necessary for navigation.

ART. 592. The resolutions of the majority with regard to the repair, equipment, and provisioning of the vessel in the port of departure shall bind the minority unless the partners in the minority renounce their participation therein, which must be acquired by the other part owners after a judicial appraisement of the value of the portion or portions ceded.

The resolutions of the majority relating to the dissolution of the association and sale of the vessel shall also be binding on the minority.

The sale of the vessel must take place at a public auction, subject to the provisions of the law of civil procedure, unless the part owners unanimously agree otherwise, the right of option to purchase and to withdraw mentioned in article 575 being always reserved.

The part of the law of civil procedure which treats of voluntary judicial auctions referred to in the last paragraph of the article we annotate, are articles 2048 to 2055 of the law in force in the Peninsula, articles 2047 to 2054 of that for Cuba and Porto Rico, as well as articles 747 to 761 of the first, and 746 to 760 of the second, and 2018 and 2019 of that for the Philippines.

ART. 593. The owners of a vessel shall have preference in her charter to other persons, offering equal conditions and price. If two or more of the former should claim said right the one having the greater interest shall be preferred, and should they have an equal interest it shall be decided by lot.

ART. 594. The part owners shall elect the manager who is to represent them in the capacity of agent.

The appointment of director or agent may be revoked at the will of the members.

The director or agent appointed in accordance with the provisions of the article we annotate may create a mortgage when specially authorized thereto by the coowners in the manner prescribed in article 589 of this code. (Article 5 of the marine mortgage law.)

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ART. 595. The agent, be he at the same time an owner of a vessel or a manager for an owner or for an association of coowners, must be qualified to trade and must be recorded in the merchants' registry of the province.

The agent shall represent the ownership of the vessel, and may in his own name and in such capacity take judicial and extrajudicial steps in all that relates to commerce.

ART. 596. The agent may discharge the duties of captain of the vessel, subject, in every case, to the provisions contained in article 609.

If two or more coowners request the position of captain, the disagreement shall be decided by a vote of the members; and if the vote should result in a tie, the position shall be given to the part owner having the larger interest in the vessel.

If the interest of the petitioners should be the same, and there should be a tie, the matter shall be decided by lot.

ART. 597. The agent shall select and come to an agreement with the captain, and shall act in the name of the owners, shall be bound in all that refers to repairs, details of equipment, armament, provisions, fuel, and freight of the vessel, and, in general, in all that relates to the requirements of navigation.

ART. 598. The agent can not order a new voyage, nor make contracts for a new charter, nor insure the vessel, without the authority of her owner or by virtue of a resolution of the majority of the coowners, unless these privileges were granted him in the certificate of his appointment.

If he should insure the vessel without authority therefor he shall be personally liable for the solvency of the underwriter.

ART. 599. The agent, manager of an association, shall give his coowners an account of the results of each voyage of the vessel, without prejudice to always having the books and correspondence relating to the vessel and to its voyages at the disposal of the same.

ART. 600. After the account of the managing agent has been approved by a relative majority, the coowners shall satisfy the expenses in proportion to their interest, without prejudice to the civil or criminal actions which the minority may deem fit to institute afterwards.

In order to enforce the payment, the managing agents shall have a right of action including attachment, which shall be instituted by virtue of a resolution of the majority, and without further proceedings than the acknowledgment of the signatures of the persons who voted the resolution.

ART. 601. Should there be any profits, the coowners may demand of the managing agent the amount due them, by means of an action including attachment, without further requisites than the acknowledgment of the signatures of the instrument approving the account.

ART. 602. The agent shall indemnify the captain for all the expenses he may have incurred from his own funds or from those of other persons, for the benefit of the vessel.

ART. 603. Before a vessel goes out to sea the agent shall have a right to discharge the captain and members of the crew whose contract did not state a definite period nor a definite voyage, paying them the salaries earned according to their contracts, and without any indemnity whatsoever, unless there is a special and specific agreement thereto.

ART. 604. If the captain or any other member of the crew should be discharged during the voyage, they shall receive their salary until the

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return to the place where the contract was made, unless there were good reasons for the discharge, all in accordance with articles 636 et seq. of this code.

ART. 605. If the contracts of the captain and members of the crew with the agent should not be for a definite period or voyage, they can not be discharged until the fulfillment of their contracts, except for reasons of insubordination in serious matters, robbery, theft, habitual drunkenness, and damage caused to the vessel or to its cargo by malice or manifest or proven negligence.

Article 637 of this code is related to the foregoing one.

ART. 606. If the captain should be a part owner in the vessel, he can not be discharged without the agent returning him the amount of his interest therein, which, in the absence of an agreement between the parties, shall be appraised by experts appointed in the manner established in the law of civil procedure.

See article 2117 of the law of civil procedure in force in the Peninsula, together with article 616 of the same, and articles 2078 and 615, respectively, of the same law amended for the islands of Cuba and Porto Rico.

ART. 607. If the captain and part owner should have obtained the command of the vessel by virtue of a special agreement contained in the articles of copartnership, he can not be deprived thereof except for the reasons mentioned in article 605.

ART. 608. In case of the voluntary sale of the vessel, all contracts between the agent and captain shall lapse, the latter reserving his right to the proper indemnity, according to the agreements celebrated with the agent.

The vessel sold shall remain subject to the security of the payment of said indemnity if, after the action against the vendor has been instituted, the latter should be insolvent.

SECTION SECOND.—*Captains and masters of vessels.*

ART. 609. Captains and masters of vessels must be Spaniards having legal capacity to bind themselves in accordance with this code, and must prove that they have the skill, capacity, and conditions required to command and direct the vessel, as established by marine laws, ordinances, or regulations, or by those of navigation, and that they are not disqualified according to the same for the discharge of said position.

If the owner of a vessel desires to be the captain thereof and does not have the legal qualifications therefor, he shall limit himself to the financial administration of the vessel, and shall intrust her navigation to the person having the qualifications required by said ordinances and regulations.

ART. 610. The following powers are inherent in the position of captain or master of a vessel:

1. To appoint or make contracts with the crew in the absence of the agent and propose said crew, should said agent be present; but the agent shall not be permitted to employ any member against the captain's express refusal.

2. To command the crew and direct the vessel to the port of its destination, in accordance with the instructions he may have received from the agent.

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3. To impose, in accordance with the shipping articles and to the laws and regulations of the merchant marine, on board the vessel, correctional penalties upon those who do not comply with his orders or who conduct themselves against discipline, holding a preliminary hearing on the crimes committed on board the vessel on the high seas, which shall be turned over to the authorities, who are to take cognizance thereof, at the first port touched.

4. To make contracts for the charter of the vessel in the absence of the agent or of her consignee, acting in accordance with the instructions received and protecting the interests of the owner most carefully.

5. To adopt all the measures which may be necessary to keep the vessel well supplied and equipped, purchasing for the purpose all that may be necessary, provided there is no time to request instructions of the agent.

6. To make, in similar urgent cases and on a voyage, the repairs to the hull and engines of the vessel and to her rigging and equipment which are absolutely necessary in order for her to be able to continue and conclude her voyage; but if she should arrive at a point where there is a consignee of the vessel, he shall act in concurrence with the latter.

Loans contracted by the captain during his last voyage for the purpose of repairing the vessel shall have preference over the vessel mortgaged if they embrace the following circumstances:

1. That the repairs to the vessel were made under the circumstances mentioned in rule 6 of the article we annotate, and with the resolution established in the said rule.

2. That in making the repairs and contracting the loans required therefor the provisions of article 583 of this code were observed.

3. That the temporary memorandum required in the said article 583 was made.

The temporary memorandum shall have all its effects with regard to the preference during the time the vessel does not return to the port of departure, all the provisions contained in article 33 of the marine mortgage law in its third and fourth paragraphs being applicable.

ART. 611. In order to comply with the obligations mentioned in the foregoing article, the captain, when he has no funds and does not expect to receive any from the agent, shall procure the same in the successive order stated below:

1. By requesting said funds of the consignees or correspondents of the vessel.

2. By applying to the consignees of the cargo or to the persons interested therein.

3. By drawing on the agent.

4. By borrowing the amount required by means of a bottomry bond.

5. By selling a sufficient amount of the cargo to cover the amount absolutely necessary to repair the vessel, and to equip her to pursue the voyage.

In the two latter cases he must apply to the judicial authority of the port, if in Spain, and to the Spanish consul, if in a foreign country; and where there should be none, to the local authority, proceeding in accordance with the prescriptions of article 583, and with the provisions of the law of civil procedure.

When the bottomry bond has been made in the case established in this article, and with the formalities mentioned in article 583, it shall have preference to the marine mortgage.

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The provisional memorandum which, in accordance with the last two articles cited, is to be made by the judge or court, or by the consul or local authority, in the certificate of the registry of the vessel, which the captain must have on board the vessel, in accordance with article 612, it shall have all its effects with regard to the preference until the vessel returns to the port of departure.

As soon as this occurs, the owner of the vessel or the captain must present the certificate record, in order that the loan may be recorded in the commercial registry within the period of forty-eight hours after the vessel has been entered.

If the port of arrival does not belong to the commercial registry in which the vessel is recorded, it shall be presented within the said period of forty-eight hours to the judge or local or marine official, who shall record the presentation of the document and order letters rogatory to be issued on the place of the registry of the vessel.

When the presentation has been made within this period, the record shall have the effect of preserving the preference established in the foregoing article; for all the other effects which the law grants by virtue of the record, there shall be considered as its date that on which the certificate of ownership of the vessel was provisionally recorded. If presented after the said period, it shall have its effect, but only from the date of its entry in the commercial registry.

Without prejudice to the obligations which this article imposes on the owner and captain, the lenders, or the persons whom the former have requested to secure the loan, may demand that the said loan be recorded in the registry.

The provisions contained in the last paragraph of the article we annotate, in alluding to the law of civil procedure, refer to rule 9, of article 2161 of that for the Peninsula, 2122 of that amended for Cuba and Porto Rico, and 2082 of that for the Philippines.

See furthermore articles 50 et seq. of the commercial registry regulations.

ART. 612. The following obligations are inherent in the office of captain:

1. To have on board before starting on a voyage a detailed inventory of the hull, engines, rigging, tackle, and other equipments of the vessel; the royal or the navigation certificate; the roll of the persons who make up the crew of the vessel, and the shipping articles; the list of passengers; the health certificate; the certificate of the registry proving the ownership of the vessel, and all the obligations which encumber the same up to that date; the charters or authenticated copies thereof; the invoices or manifest of the cargo, and the instrument of the expert visit or inspection, should it have been made at the port of departure.

2. To have a copy of this code on board.

3. To have three folioed and stamped books, placing at the beginning of each one a note of the number of folios it contains, signed by the marine official, and in his absence by the competent authority.

In the first book, which shall be called "log book," he shall enter every day the condition of the atmosphere, the reigning winds, the course sailed, the rigging carried, the force of the engines of navigation, the distance covered, the maneuvers executed, and other incidents of navigation. He shall also enter the damage suffered by the vessel in her hull, engines, rigging, and tackle, no matter what is its cause, as well as the imperfections and averages of the cargo, and the effects and importance of the jetsam, should there be any; and in cases of grave resolutions which require the advice or a meeting of the officers of the vessel, or even of the passengers and crew, he shall record the decision adopted. For the notices indicated he shall make use of the binnacle book, and of the steam or engine book kept by the engineer.

In the second book, called the "accounting book," he shall enter all the amounts collected and paid for the account of the vessel, entering specifically article by article, the reason for the collection, and

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the amounts invested in provisions, repairs, acquisition of rigging or goods, fuel, outfits, wages, and other expenses. He shall furthermore enter therein a list of all the members of the crew, stating their domiciles, their wages and salaries, and the amounts they may have received on account, directly or by delivery to their families.

In the third book, called "freight book," he shall record the entry and exit of all the goods, stating their marks and packages, names of the shippers and of the consignees, ports of loading and unloading, and the freight earned. In the same books he shall record the names and places of sailing of the passengers and the number of packages of which their baggage consists, and the price of the passage.

4. To make, before receiving the freight, with the officers of the crew, and with two experts, if required by the shippers and passengers, an examination of the vessel, in order to ascertain whether she is watertight, and whether the rigging and engines are in good condition; and if she has the equipment required for good navigation, preserving a certificate of the memorandum of this inspection, signed by all the persons who may have taken part therein, under their liability.

The experts shall be appointed one by the captain of the vessel and the other one by the person who requests the examination, and in case of disagreement a third shall be appointed by the marine authority of the port.

5. To remain constantly on board the vessel with the crew during the time the freight is taken on board and carefully watch the stowage thereof; not to consent to any merchandise or goods of a dangerous character to be taken on, such as inflammable or explosive substances, without the precautions which are recommended for their packing, management and isolation; not to permit that any freight be carried on deck which by reason of its disposition, volume, or weight makes the work of the sailors difficult, and which might endanger the safety of the vessel; and if, on account of the nature of the merchandise, the special character of the shipment, and principally the favorable season it takes place, he allows merchandise to be carried on deck, he must hear the opinion of the officers of the vessel, and have the consent of the shippers and of the agent.

6. Demand a pilot at the expense of the vessel whenever required by navigation, and principally when a port, canal, or river, or a roadstead or anchoring place is to be entered with which neither the officers nor the crew are acquainted.

7. To be on deck at the time of sighting land and to take command on entering and leaving ports, canals, roadsteads, and rivers, unless there is a pilot on board discharging his duties. He shall not spend the night away from the vessel except for serious causes or by reason of official business.

8. To present himself, when making a port under stress, to the maritime authority if in Spain and to the Spanish consul if in a foreign country, before twenty-four hours have elapsed, and make a statement of the name, registry, and port of departure of the vessel, of its cargo, and reason of arrival, which declaration shall be viséd by the authority or by the consul if after examining the same it is found to be acceptable, giving the captain the proper certificate in order to show his arrival under stress and the reasons therefor. In

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the absence of marine officials or of the consul, the declaration must be made before the local authority.

9. To take the steps necessary before the competent authority in order to enter in the certificate of the Commercial Registry of the vessel the obligations which he may contract in accordance with article 583.

10. To put in a safe place and keep all the papers and belongings of any member of the crew who might die on the vessel, drawing up a detailed inventory, in the presence of passengers as witnesses, and, in their absence, of members of the crew.

11. To conduct themselves according to the rules and precepts contained in the instructions of the agent, being liable for all that they may do in violation thereof.

12. To give an account to the agent from the port where the vessel arrives, of the reason therefor, taking advantage of the semaphore, telegraph, mail, etc., according to the cases; notify him of the freight he may have received, stating the name and domicile of the shippers, freight earned, and amounts borrowed on bottomry bond, advise him of his departure, and give him any information and data which may be of interest.

13. To observe the rules on the situation of lights and evolutions to prevent collisions.

14. To remain on board, in case of danger to the vessel, until all hope to save her is lost, and before abandoning her to hear the officers of the crew, abiding by the decision of the majority; and if the boats are to be taken to, he shall take with him, before anything else, the books and papers, and then the articles of most value, being obliged to prove in case of the loss of the books and papers that he did all he could to save them.

15. In case of wreck he shall make the proper protest in due form at the first port reached, before the competent authority or Spanish consul, within twenty-four hours, stating therein all the incidents of the wreck, in accordance with case 8 of this article.

16. To comply with the obligations imposed by the laws and rules of navigation, customs, health, and others.

With regard to the certificate of the registry referred to in number 1, which is indispensable for the vessel to put to sea, see articles 50 et seq. of the commercial registry regulations.

According to article 14 of the marine-mortgage law, in order that the effects of the said certificate may be enforced, it must be recorded in the commercial registry of the province in which the vessel in question is registered, or in that of the place of the construction of the same, when vessels which are not registered are in question.

The register must also enter the certificate of the registry showing the ownership of the vessel, and which the captain must have on board the vessel, in accordance with the provisions of the article we annotate, there being sufficient reason to refuse to make the record if said document is not presented. Only in case the owner of the vessel states that she is on a voyage may the said entry be omitted, which, however, must be made as soon as the vessel returns from the said voyage.

There shall be precisely stated in the record made in the commercial registry of a mortgage whether the entry referred to in the foregoing paragraph of this article was made, or whether, on the contrary, it was omitted, and for what reason.

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If the instrument creating a marine mortgage should be executed abroad, in order that it may have its legal effects, this must be done before the Spanish consul of the port where it takes place, and it must furthermore be recorded in

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the registry of the consulate, and shall be entered on the certificate of ownership which the captain must have, in accordance with article 612 of the code of commerce.

The Spanish consul shall forward at once a true copy of the instrument to the commercial registry where the vessel is registered. The register, upon receiving it, shall make the entry in the registry.

Other contracts made abroad must be executed with the same formalities, if they are to have preference over the marine-mortgage loan by virtue of their record in the commercial registry. (Article 17 of the marine-mortgage law cited.)

The competent authorities referred to in the first paragraph of the third obligation of this article are, in our opinion, the municipal judges in the Peninsula and in the Antilles, and the justices of the peace in the Philippines.

They must keep, besides these books, the proper documents, according to the kind of navigation in which the vessels are engaged.

See articles 43 and 44 of the regulations for the navigation of the merchant marine.

With regard to the pilotage, treated of in rule 6 of this article, see the provisions of the royal order of March 11, 1886.

See with regard to the provisions of rule 8 of this article, articles 2131 et seq. of the law of civil procedure for the Peninsula, 2092, et seq. of that for Cuba and Porto Rico, and article 2052 of that for the Philippines.

As an addition to the provisions contained in number 9, and with regard to the prescriptions contained in rule 8 of this article, see articles 50 et seq. of the commercial registry regulations.

The rules prescribed in number 13 of this article constitute those contained in the international regulations for lights and for the entering of ports, which have been accepted by Germany, Austria, Belgium, Brazil, Chile, Denmark, Ecuador, Spain, the United States, France, Great Britain, Greece, Hawaii, Italy, Japan, Norway, the Netherlands, Portugal, Russia, Sweden, and Turkey.

The formalities to be filled in making the declaration and the proceedings to be observed, according to No. 1 of this article we annotate, are contained in articles 2131 to 2146 of the law of civil procedure for the Peninsula, 2092 to 2107 of that amended for the island of Cuba and Porto Rico, and 2052 to 2067 of that for the Philippines.

The laws and regulations referred to in the last paragraph are, among others, those of the merchant navigation and the customs regulations, in so far as they refer to captains and their manifests.

ART. 613. If a captain navigates for freight in common or on shares he can not make any transaction for his exclusive account, and should he do so the profit shall belong to the other persons in interest, and the losses shall be his.

ART. 614. A captain who, having made an agreement to make a voyage, should not fulfill his obligation, without being prevented by an accidental case or by force majeure, shall pay for all the losses his action may cause, without prejudice to the criminal penalties which may be proper.

ART. 615. Without the consent of the agent, the captain can not have himself substituted by another person; and should he do so, besides being liable for all the acts of the substitute and bound to the indemnities mentioned in the foregoing article, the substitute as well as the captain may be discharged by the agent.

ART. 616. If the provisions and fuel of the vessel are consumed before arriving at the port of destination, the captain shall decide, with the consent of the officers of the same, to make the nearest port to get a supply of either; but if there are persons on board who have provisions of their own he may force them to turn said provisions over for the common consumption of all persons on board, paying the price thereof immediately, or, at the latest, at the first port reached.

This article is related to article 702 of this code.

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ART. 617. The captain can not contract loans on respondentia, and should he do so the contract shall be void.

Neither can he borrow money on bottomry for his own transactions, except on the portion of the vessel he owns, provided no money has been borrowed on the whole vessel, and provided there does not exist any other kind of lien or obligation thereon. When he is permitted to do so, he must state what interest he has in the vessel.

In case of violation of this article the principal, interest, and costs shall be charged to the private account of the captain, and the agent shall furthermore have the right to discharge him.

ART. 618. The captain shall be civilly liable to the agent and the latter to the third persons who may have made contracts with the former—

1. For all the damages suffered by the vessel and its cargo by reason of want of skill or negligence on his part. If a misdemeanor or crime has been committed he shall be liable in accordance with the penal code.

2. For all the thefts committed by the crew, reserving his right of action against the guilty parties.

3. For the losses, fines, and confiscation imposed on account of violation of the laws and regulations of customs, police, health, and navigation.

4. For the loss and damage caused by mutinies on board the vessel, or by reason of faults committed by the crew in the service and defense of the same, if he does not prove that he made full use of his authority to prevent or avoid them.

5. For the loss and damages caused by an undue use of powers and nonfulfillment of the obligations which are his in accordance with articles 610 and 612.

6. For those arising by reason of his going out of his course or taking a course which he should not have taken without sufficient cause, in the opinion of the officers of the vessel, at a meeting with the shippers or supercargos who may be on board.

No exception whatsoever shall exempt him from this obligation.

7. For those arising by reason of his voluntarily entering a port other than his destination, with the exception of the cases or without the formalities referred to in article 612.

8. For those arising by reason of the nonobservance of the provisions contained in the regulations for lights and evolutions for the purpose of preventing collisions.

ART. 619. The captain shall be liable for the cargo from the time it is turned over to him at the dock, or afloat alongside the ship, until he delivers it on the shore or on the discharging wharf, unless the contrary has been expressly agreed upon.

See article 625 of this code.

ART. 620. The captain shall not be liable for the damages caused to the vessel or to the cargo by reason of force majeure; but he shall always be so—no agreement to the contrary being valid—for those arising through his own fault.

Neither shall he be personally liable for the obligations he may have contracted for the repair, equipment, and provisioning of the vessel, which shall be incurred by the agent, unless the former has expressly bound himself personally or signed a draft or promissory note in his name.

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ART. 621. A captain who borrows money on bottomry, or who pledges or sells merchandise or provisions in other cases and without the formalities prescribed in this code, shall be liable for the principal, interest, and costs, and shall indemnify for the damages he may cause.

The captain who commits fraud in his accounts shall reimburse the amount defrauded, and shall be subject to the provisions contained in the penal code.

ART. 622. If when on a voyage the captain should receive notice of the appearance of privateers or men of war against his flag, he shall be obliged to make the nearest neutral port, inform his agent or shippers, and await an occasion to sail in company or until the danger is over or to receive final orders from the agent or shippers.

ART. 623. If he should run the danger of being attacked by a privateer and after having done all that was possible to avoid the encounter and have resisted the delivery of the goods on the vessel or of its cargo, they should be forcibly taken away from him, or he should be obliged to deliver them, he shall make an entry in his freight book and shall swear to the act before the competent authority at the first port he touches.

After the force majeure has been proven, he shall be exempted from liability.

ART. 624. A captain whose vessel has gone through a hurricane or who believes that the cargo has suffered damages or averages, shall take an oath thereon before the competent authority at the first port he touches within the twenty-four hours following his arrival, and shall ratify it within the same period when he arrives at his destination, immediately proceeding with the proof of the facts, it not being permitted to open the hatches until this has been done.

The captain shall proceed in the same manner if, the vessel having been wrecked, he is saved alone or with part of his crew, in which case he shall appear before the nearest authority, and make a sworn statement of the facts.

The authority or the consul abroad shall verify the said facts, receiving a sworn statement of the members of the crew and passengers who may have been saved, and taking the other steps which may assist in arriving at the facts, drafting a certificate of the result of the proceedings in the log book and in that of the sailing master, and shall deliver the original proceedings to the captain, stamped and folioed, with a memorandum of the folios, which he must rubricate, for their presentation to the judge or court of the port of destination.

The statement of the captain shall be accepted if it is in accordance with those of the crew and passengers; if they disagree, the latter shall be accepted, unless there is proof to the contrary.

See number 15 of article 612 and its note, in so far as it relates to the proceedings for recording the sworn statement.

ART. 625. The captain, under his personal liability, as soon as he arrives at the port of destination, obtains the necessary permission from the health and customs officers and fulfills the other formalities required by the regulations of the administration, shall turn over the cargo, without any defalcation, to the consignees, and, in a proper case, the vessel, rigging, and freights to the agent.

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If, by reason of the absence of the consignee or on account of the nonappearance of a legal holder of the invoices, the captain does not know to whom he is to make the legal delivery of the cargo, he shall place it at the disposal of the proper judge or court or authority, in order that he may decide with regard to its deposit, preservation, and custody.

Article 2119 of the law of civil procedure for the Peninsula, 2080 of that for Cuba and Porto Rico, and 2040 of that for the Philippines are applicable to the proceedings to be observed with regard to the deposits referred to in the last paragraph of this article.

SECTION THIRD.—*Officers and crews of vessels.*

ART. 626. In order to be a sailing master it shall be necessary—

1. To have the conditions required by the marine or navigation laws or regulations.

2. To not be disqualified in accordance therewith for the discharge of the position.

See articles 7 et seq. of the regulations for the merchant marine navigation. In articles 14 et seq. of said regulations the conditions necessary in order to admit applicants to examinations for the three classes into which sailing masters are divided, are prescribed. Nevertheless, these three classes have been reduced to two by the royal order of May 20, 1890, which calls them "captains of the merchant marine," which take the place of the old first and second sailing masters, and "sailing masters of the merchant marine," which are equivalent to the old third sailing masters. Furthermore said royal order prescribes the manner of issuing certificates to these two classes of sailing masters, the requisites necessary in order to attain the class of sailing masters of merchantmen, and for the latter to attain the grade of captains and the manner of proving the actual time of sea service.

ART. 627. The sailing master, as the second chief of the vessel and unless the agent orders otherwise, shall take the place of the captain in cases of absence, sickness, or death, and shall then assume all his powers, obligations, and liabilities.

ART. 628. The sailing master must be supplied with charts of the waters which are to be navigated, with the maps and quadrants or sextants which are in use and which are necessary for the discharge of his duties, being liable for the accidents which may arise by reason of his fault in this matter.

ART. 629. The sailing master shall personally and specially keep a book folioed and stamped on all its pages, called the "binnacle book," with a memorandum at the beginning stating the number of folios it contains, signed by the competent authority, and shall enter therein daily the distance and course traveled, the variations of the needle, the leeway, the direction and force of the wind, the condition of the atmosphere and of the sea, the rigging set, the latitude and longitude observed, the number of furnaces fired, the steam pressure, the number of revolutions, and under the name of "incidents" the evolutions made, the meetings with other vessels, and all the particulars and accidents which may occur during the voyage.

ART. 630. In order to change the course and to take the one most convenient for a good voyage of the vessel, the sailing master shall come to an agreement with the captain. If the latter should object, the sailing master shall make the remarks he may consider necessary in the presence of the other officers of the vessel. If the captain should still insist in his objection, the sailing master shall make the

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proper protest, signed by him and by another one of the officers in the log book, and shall obey the captain, who shall be the only one liable for the consequences of his order.

ART. 631. The sailing master shall be liable for all the damages suffered by the vessel and cargo by reason of his negligence or want of skill, without prejudice to the criminal liability which may arise, if a crime or offense were committed.

ART. 632. It shall be the duty of the mate—

1. To care for the preservation of the hull and rigging of the vessel, and to take charge of the tackle and equipment which make up her outfit, suggesting to the captain the repairs necessary and the replacement of the goods and implements which are rendered useless and lost.

2. To take care that the cargo is well disposed of, keeping the vessel always ready for evolutions.

3. To preserve order, discipline, and good service among the crew, requesting the necessary orders and instructions of the captain, and quickly informing him of any occurrence in which the intervention of his authority may be necessary.

4. To assign to each sailor the work he is to do on board, in accordance with the instructions received, and see that it is exactly and carefully carried out.

5. To take charge by inventory of the rigging and all the equipments of the vessel, if it should be laid up, unless the agent has ordered otherwise.

With regard to engineers the following rules shall govern:

1. In order to be shipped as a marine engineer forming part of the complement of a merchant vessel it shall be necessary to possess the qualifications which the laws and regulations require, unless disqualified in accordance therewith to hold said position. Engineers shall be considered as officers of the vessel, but they shall exercise no command nor intervention except with relation to the motive power.

2. When there are two or more engineers on one vessel, one of them shall be the chief, and the other engineers and all the personnel of the engines shall be under his orders; he shall furthermore have the motive power under his charge, as well as the space, instruments, and implements belonging thereto, the fuel, the lubricating material and, finally, all which comes under the jurisdiction of an engineer on board a vessel.

3. He shall keep the engines and boilers in good condition and in a state of cleanliness, and shall order what may be proper in order that they may always be ready for regular use, being liable for the accidents or damages which may arise by reason of his want of skill or negligence to the motive apparatus, or to the vessel and cargo, without prejudice to the criminal liability which may be proper if a crime or offense is proven.

4. He shall make no change in the motive apparatus, nor shall he repair the injuries he may have noticed in the same, nor change the normal speed of its action without the prior authority of the captain, to whom, if he should object to their being made, he shall state the reasons he may deem proper in the presence of the other engineers or officers; and if, notwithstanding this, the captain should insist in his objection, the chief engineer shall make the proper protest, entering

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the same in the engine book, and shall obey the captain, who shall be the only one liable for the consequences of his order.

5. He shall inform the captain of any accident which may occur to the motive apparatus, and shall inform him when it may be necessary to stop the engines for some time, or when any other accident occurs in his department of which the captain should be immediately informed, frequently advising him furthermore of the consumption of fuel and lubricating material.

6. He shall keep a book or registry called the "Engine book," in which there shall be entered all the data that refer to the work of the engines, such as, for example, the number of furnaces fired, the steam pressure in the boilers and cylinders, the vacuum in the condenser, the temperatures, the degree of saturation of the water, the consumption of fuel and lubricating material, and under the heading of "Noteworthy occurrences" the accidents and derangements which occur in engines and boilers, the causes therefor, and the means employed to repair the same. There shall also be stated, taking the information from the binnacle book, the force and direction of the wind, the rigging set, and the speed of the vessel.

ART. 633. The mate shall take command of the vessel in case of the impossibility or disability of the captain and sailing master, assuming in such case his powers and liability.

According to article 26 of the merchant navigation regulations no vessel is obliged to carry a mate, it being optional with the captains and owners to take them or not, as they may deem proper.

ART. 634. The captain may make up his crew with the number he may consider advisable, and in the absence of Spanish sailors he may ship foreigners residing in the country, the number thereof not to exceed one-fifth of the total crew. If in foreign ports the captain should not find a sufficient number of Spanish sailors, he may make up the crew with foreigners, with the consent of the consul or marine authorities.

The agreements which the captain may make with the members of the crew and others who go to make up the complement of the vessel, to which reference is made in article 612, must be reduced to writing in the accounting book without the intervention of a notary or clerk, signed by the parties thereto, and viséd by the marine authority if they are executed in Spanish territory, or by the consuls or consular agents of Spain if executed abroad, stating therein all the obligations which each one contracts and all the rights they acquire, said authorities taking care that these obligations and rights are recorded in a concise and clear manner, which will not give rise to doubts or claims.

The captain shall take care to read to them the articles of this code, which concern them, stating that they were read in the said document.

If the book includes the requisites prescribed in article 612, and there should not appear any signs of alterations in its clauses, it shall be admitted as evidence in questions which may arise between the captain and the crew with regard to the agreements contained therein and the amounts paid on account of the same.

Every member of the crew may request a copy of the captain, signed by the latter, of the agreement and of the liquidation of his wages, as they appear in the book.

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See article 6 of the merchant navigation regulations.

With regard to the contract or agreement referred to in the second paragraph of this article, they repeal the provisions or the ordinances which prescibed the necessity of said contracts being executed by means of a public instrument before the marine officials.

ART. 635. A sailor who has contracted to serve on a vessel can not rescind his contract nor fail to comply therewith except by reason of a legitimate impediment which may have occurred.

Neither can he pass from the service of one vessel to another without obtaining the written consent of the captain of the vessel on which he may be.

If, without obtaining said permission, the sailor who has signed for one vessel should sign for another one, the second contract shall be void, and the captain may choose between forcing him to fulfill the service to which he first bound himself or look for a person to substitute him at his expense.

Said sailor shall furthermore lose the wages earned on his first contract to the benefit of the vessel for which he may have signed.

A captain who, knowing that a sailor is in the service of another vessel, should have made a new agreement with him, without having requested the permission referred to in the foregoing articles, shall be personally liable to the captain of the vessel to which the sailor first belonged for that part of the indemnity, referred to in the third paragraph of this article, which the sailor could not pay.

ART. 636. Should a fixed period for which a sailor has signed not be stated, he can not be discharged until the end of the return voyage to the port where he enrolled.

ART. 637. Neither can the captain discharge a sailor during the time of his contract except for sufficient cause, the following being considered as such:

1. The perpetration of a crime which disturbs order on the vessel.
2. Repeated offenses of insubordination against discipline or against the fulfillment of the service.
3. Repeated incapacity or negligence in the fulfillment of the service to be rendered.
4. Habitual drunkenness.
5. Any occurrence which incapacitates the sailor to carry out the work under his charge, with the exception of the provisions contained in article 644. 6. Desertion.

The captain may, however, before setting out on a voyage and without giving any reason whatsoever, refuse to permit a sailor he may have taken from going on board and may leave him on land, in which case he will be obliged to pay him his wages as if he had rendered services.

The indemnity shall be paid from the funds of the vessel if the captain should have acted for reasons of prudence and in the interest of the safety and good service of the former. Should this not be the case, it shall be paid by the captain personally.

After the vessel has sailed, and during the voyage and until the conclusion thereof, the captain can not abandon any member of his crew on land or on the sea, unless, by reason of being guilty of some crime, his imprisonment and delivery to the competent authority is proper in the first port touched, which will be obligatory on the captain.

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ART. 638. If, the crew having been taken, the voyage is revoked by the will of the agent or of the charterers before or after the vessel has put to sea or if the vessel is in the same manner given a different destination than that fixed in the agreement with the crew, the latter shall be indemnified because of the rescission of the contract according to the case, viz:

1. If the revocation of the voyage should be decided before the departure of the vessel from the port, each sailor engaged shall be given one month's salary, besides what may be due him in accordance with his contract, for the services rendered to the vessel up to the date of the revocation.

2. If the agreement should have been for a fixed amount for the whole voyage, there shall be graduated what may be due for said month and days, calculating the same in proportion to the estimated duration of the voyage, in the judgment of experts, in the manner established in the law of civil procedure; and if the proposed voyage should be of such short duration that it is calculated at one month more or less, the indemnity shall be fixed for fifteen days, discounting in all cases the sums advanced.

3. If the revocation should take place after the vessel has put to sea, the sailors engaged for a fixed amount for the voyage shall receive the salary which may have been offered them in full as if the voyage had terminated, and those engaged by the month shall receive the amount corresponding to the time they might have been on service and the time required by the vessel to arrive at the port which was the conclusion of the voyage, the captain being obliged, furthermore, to pay said sailors the passage to the said port or to the port of sailing of the vessel, as may be convenient for them.

4. If the agent or the charterers of the vessel should give said vessel a destination other than that fixed in the agreement, and the members of the crew should not agree thereto, they shall be given by way of indemnity half the amount fixed in case No. 1, besides what may be owed them for the part of the monthly wages corresponding to the days which have elapsed from the date of their agreements.

If they accept the change, and the voyage, on account of the greater distance or for other reasons, should give rise to an increase of wages, the latter shall be privately regulated, or through amicable arbitrators in case of disagreement. Even though the voyage may be to a nearer point, this shall not give rise to a reduction in the wages agreed upon.

If the revocation or change of the voyage should be decided upon by the shippers or charterers, the agent shall have a right to demand of them the indemnity which is justly due.

The provisions of the law of civil procedure, referred to in No. 2 of this article, are those contained in article 2117, as well as those of article 616 of that for the Peninsula, 2078 and 615 of that amended for Cuba and Porto Rico, and articles 2038 and 589 of that for the Philippines.

ART. 639. If the revocation of the voyage should arise from a sufficient cause independent of the will of the agent or charterers, and the vessel should not have left the port, the members of the crew shall not be entitled to anything but the wages earned up to the day on which the revocation took place.

ART. 640. The following shall be sufficient reasons for the revocation of the voyage:

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1. A declaration of war or interdiction of commerce with the power to whose territory the vessel was bound.

2. The blockade of the port of destination or the breaking out of an epidemic after the agreement.

3. The prohibition to receive in said port the goods which make up the cargo of the vessel.

4. The detention or embargo of the same by order of the Government, or for any other reason independent of the will of the agent.

5. The inability of the vessel to navigate.

ART. 641. If, after a voyage has been begun, any of the first three causes mentioned in the foregoing article should occur, the sailors shall be paid at the port the captain may deem it advisable to make for the benefit of the vessel and cargo, according to the time they may have served thereon; but if the vessel is to continue the voyage, the captain and the crew may mutually demand the enforcement of the contract.

In case of the occurrence of the fourth cause, the crew shall continue to be paid half wages, if the agreement were for monthly wages; but if the detention should exceed three months, the engagement shall be rescinded and the crew shall be paid what they should have earned, according to the contract, if the voyage had been made, and if the agreement had been made for a fixed sum for the voyage, the contract must be complied with in the terms agreed upon.

In the fifth case, the crew shall only be entitled to recover the wages earned; but if the disability of the vessel should have been caused by the negligence or lack of skill of the captain, engineer, or sailing master, they shall indemnify the crew for the loss suffered, always reserving the criminal liability which may be proper.

ART. 642. If the crew has been engaged to work on shares they shall not be entitled, by reason of the revocation, delay, or greater extension of the voyage, to anything but the proportionate part of the indemnity paid into the common funds of the vessel by the persons liable for said occurrences.

ART. 643. If the vessel and her freight should be totally lost, by reason of capture or wreck, all rights of the crew to demand any wages whatsoever shall be extinguished, as well as that of the agent for the recovery of the advances made.

If a portion of the vessel or freight should be saved, or part of either, the crew engaged on wages, including the captain, shall retain their rights on the salvage, so far as they go, on the remainder of the vessel as well as the value of the freights of the cargo saved; but sailors who are engaged on shares shall not have any right whatsoever to the salvage of the hull, but only on the portion of the freight saved. If they should have worked to collect the remainder of the shipwrecked vessel, they shall be given a sum on the value of the articles saved, in proportion to the efforts made and to the risks run to do so.

ART. 644. A sailor who falls sick shall not lose his right to wages during the voyage, unless the sickness is the result of his own fault. At any rate, the costs of the attendance and cure shall be defrayed from the common funds, to be repaid.

If the sickness should be by reason of an injury received in the service or defense of the vessel the sailor shall be attended and cured from the common funds, there being deducted before anything else from the proceeds of the freight, the costs of the attendance and cure.

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ART. 645. If a sailor should die during the voyage his heir shall be given the wages earned and not received, according to his engagement and the reason for his death, namely:

If he should have died a natural death and should have been engaged on wages there shall be paid what may have been earned up to the date of his death.

If the engagement had been made for a fixed sum for the whole voyage there shall be paid half the amount earned if the sailor died on the voyage out, and the whole amount if he died on the return voyage.

And if the engagement had been made on shares and the death should have occurred after the voyage was begun, the heirs shall be paid the entire portion due the sailor, but should the latter have died before the departure of the vessel from the port, the heirs shall not be entitled to claim anything.

If the death should have occurred in the defense of the vessel, the sailor shall be considered as living, and his heirs shall be paid, at the end of the voyage, the full amount of wages or the full part of the profits due him as to the others of his grade.

The sailor shall likewise be considered as present in the event of his capture when defending the vessel, in order to enjoy the same benefits as the rest; but should he have been captured on account of carelessness or other negligence not related to the service, he shall only receive the wages due up to the day of his capture.

ART. 646. The vessel with her engines, rigging, equipment, and freights shall be liable for the pay earned by the crew engaged per month or for the trip, the liquidation and payment to take place between one voyage and the other.

After a new voyage has been undertaken, credits such as the former shall lose their right of preference.

ART. 647. The officers and the crew of the vessel shall be exempted from all engagements, if they deem it proper, in the following cases:

1. If, before the beginning of the voyage, the captain attempts to change it, or there occurs a naval war with the power to which the vessel was destined.

2. If a disease should break out and be officially declared epidemic in the port of destination.

3. If the vessel should change owner or captain.

ART. 648. By the complement of a vessel shall be understood all the persons embarked, from the captain to the cabin boy, necessary for her management, evolutions, and service, and there shall, therefore, be understood in the complement the crew, sailing masters, engineers, stokers, and other persons not having a specific name; but there shall not be included the passengers nor the persons the vessel is only transporting.

With regard to the personnel of vessels, see articles 6 et seq. of the regulations for the merchant marine.

SECTION FOURTH—*Supercargoes.*

ART. 649. Supercargoes shall discharge on board the vessel the administrative duties which the agent or shippers may have assigned them; they shall keep an account and registry of their transactions in a book which shall have the same conditions and requisites as required

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for the accounting book of the captain, and shall respect the latter in his duties as chief of the vessel.

The powers and liabilities of the captain shall cease, when there is a supercargo, with regard to that part of the administration legitimately conferred upon the latter, but shall continue in force for all acts which are inseparable from his authority and office.

Notwithstanding that there are stated here the duties of a supercargo, it should not be construed as meaning that there must always be a special officer with this name and these obligations, because the regulations for the merchant marine now in force do not include said official among the persons a vessel must carry.

ART. 650. All the provisions contained in the second section of Title III, book 2, with regards to qualifications, manner of making contracts, and liabilities of factors shall be applicable to supercargoes.

ART. 651. Supercargoes can not, without special authorization or agreement, make any transaction for their own account during the voyage, with the exception of the ventures which, in accordance with the custom of the port of destination, they are permitted to do.

Neither shall they be permitted to invest in the return trip more than the profits from the ventures, unless there is a special authorization thereto from the principals.

TITLE III.—SPECIAL CONTRACTS OF MARITIME COMMERCE.

SECTION FIRST—*Charter parties.*

§ 1.—*Forms and effects of charter parties.*

ART. 652. A charter party must be drawn in duplicate and signed by the contracting parties, and when either does not know how or can not do so, by two witnesses at their request.

The charter party shall include, besides the conditions unrestrictedly stipulated, the following statements:

1. The kind, name, and tonnage of the vessel.
2. Her flag and port of registry.
3. The name, surname, and domicile of the captain.
4. The name, surname, and domicile of the agent, if the latter should make the charter party.
5. The name, surname, and domicile of the charterer, and if he states that he is acting by commission, that of the person for whose account he makes the contract.
6. The port of loading and unloading.
7. The capacity, number of tons or weight, or measure which they respectively bind themselves to load and transport, or whether it is the total cargo.
8. The amount to be paid, stating whether it is to be a fixed amount for the voyage or so much per month, or for the space to be occupied, or for the weight or size of the goods of which the cargo consists, or in any other manner whatsoever agreed upon.
9. The amount of primage to be allowed the captain.
10. The days agreed upon for loading and unloading.
11. The lay days and extra lay days to be allowed and the rate of demurrage.

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ART. 653. If the freight should be received without the contract having been signed, said contract shall be understood as executed in accordance with the contents of the bill of lading, which shall be the only instrument with regard to the freight by which to fix the rights and obligations of the owner, of the captain, and of the charterer.

ART. 654. The charter parties executed with the intervention of a broker, who certifies to the authenticity of the signatures of the contracting parties made in his presence, shall be full evidence in court; and if said signatures should not agree the ones identical with the signatures the broker must keep in his registry, if kept in accordance to law, shall be final.

The contracts shall also be admitted as evidence, even though a broker has not taken part therein, if the contracting parties acknowledge the signatures to the same as their own.

Should no broker have taken part in the charter party and should the signatures not have been acknowledged, doubts shall be decided by the invoice, and in the absence thereof by the proofs submitted by the parties.

Charter parties which include the requisites prescribed in the first paragraph of the article we annotate are final instruments, as conclusively indicated in number 6 of article 1429 of the law of civil procedure for the Peninsula, 1427 of that for Cuba and Porto Rico, and 1411 of that for the Philippines.

ART. 655. Charter parties executed by the captain in the absence of the agent shall be valid and efficient, even though in executing them he should have acted in violation of the orders and instructions of the agent or charterer; but the latter shall have a right of action against the captain to recover damages.

ART. 656. If in the charter party the time in which the loading and unloading is to take place is not stated, the customs of the port where this takes place shall be observed. After the period stipulated or the customary one has passed, and should there not be in the freight contract an express clause fixing the indemnification for the delay, the captain shall be entitled to demand demurrage for the usual and extra lay days which may have elapsed in loading and unloading.

ART. 657. If during the voyage the vessel should be rendered unserviceable, the captain shall be obliged to charter another one at his expense, in good condition, to take the cargo to its destination, for which purpose he shall be obliged to look for a vessel not only at the port of arrival but in the other ports within a distance of 150 kilometers.

If the captain should not furnish a vessel to take the cargo to its destination, either through indolence or malice, the freighters, after a demand of the captain to charter a vessel within a period which can not be extended, may charter one and apply to the judicial authority requesting that the charter party which may have been made be immediately approved.

The same authority shall judicially force the captain to confirm the charter made by the shippers for his account and under his liability.

If the captain, notwithstanding his efforts, should not find a vessel to charter, he shall deposit the cargo at the disposal of the freighters, to whom he shall communicate the facts on the first opportunity presenting itself, the charter being regulated in such cases by the distance

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covered by the vessel, there being no right to any indemnification whatsoever.

With regard to the mode of procedure in making the deposit of the cargo in this case, see the provisions of articles 2119 et seq. of the law of civil procedure now in force.

ART. 658. The charter shall be paid according to the conditions stipulated in the contract, and should they not be specific, or should they be ambiguous, the following rules shall be observed:

1. If the vessel has been chartered by months or by days, the charter shall begin to run from the day the loading of the vessel is begun.

2. In charters made for a fixed period, the charter shall begin on the same day.

3. If the freights are charged according to weight, the payment shall be made according to gross weight, including the wrappers, such as barrels or any other object containing the cargo.

ART. 659. The merchandise sold by the captain to pay for the necessary repairs to the hull, machinery, or equipment, or for unavoidable and urgent requirements, shall pay freight.

The price of this merchandise shall be fixed according to the success of the voyage, namely:

1. If the vessel should arrive safely at the port of destination, the captain shall pay the price which merchandise of the same kind brings at the port where it is sold.

2. If the vessel should be lost, the captain shall pay the price said merchandise would have brought in sale.

The same rule shall be observed in the payment of the freight in full if the vessel arrives at her destination, and in proportion to the distance covered if she should be lost beforehand.

ART. 660. Merchandise jettisoned for the common safety shall not pay freight; but its value shall be considered as general average, and shall be computed in proportion to the distance covered when it was jettisoned.

ART. 661. Neither shall merchandise which was lost by reason of shipwreck or stranding pay freight, nor that seized by pirates or enemies.

If the freight should have been paid in advance, it shall be returned, unless there was an agreement to the contrary.

ART. 662. If the vessel or the merchandise should be recovered, or should the goods of the shipwreck be picked up, the freight corresponding to the distance covered by the vessel transporting the cargo shall be paid; and should the vessel be repaired and transport said merchandise to the port of destination, the full freight shall be paid, without prejudice to what may be due by reason of the average.

ART. 663. Merchandise which is damaged or reduced on account of its character or bad quality and condition of the packing, or by reason of an accidental case, shall pay full freight, and as was stipulated in the freight contract.

ART. 664. The natural increase in weight or size of the merchandise loaded on the vessel shall accrue to the benefit of the owner, and shall pay the proper freight fixed in the contract for the same.

ART. 665. The cargo shall be specially liable for the payment of the freights, expenses, and duties arising therefrom, which must be reimbursed by the shippers, as well as for the part of the gross average

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which may be due, but it shall not be legal for the captain to delay unloading on account of delay in complying with this obligation.

Should there be reasons for distrust, the judge or court, at the instance of the captain, may order the deposit of the merchandise until he has been paid in full.

ART. 666. The captain may request the sale of the cargo in so far as necessary to pay the freight, expenses, and averages due him, reserving the right of action to recover the balance due him therefor if the proceeds of the sale should not have sufficed to cover his credit.

With regard to the mode of procedure to request the sale of the cargo and to carry it out, the provisions of title 6 of the second part of the law of civil procedure, articles 2161 et seq. of that for the Peninsula, 2122 et seq. of that for Cuba and Porto Rico, and article 2082 of that for the Philippines are to be observed.

ART. 667. The goods loaded shall be liable in the first place for their freights and expenses during twenty days, to be counted from the date of their delivery or deposit. During this period the sale of the same may be requested, even though there be other creditors and the case of bankruptcy of the freighter or consignee should occur.

This right can not be made use of, however, on the goods which, after being delivered, were turned over to a third person without malice on the part of the latter and for a valuable consideration.

Article 2161 of the law of civil procedure for the Peninsula, and its equivalents of that for Cuba, Porto Rico, and for the Philippines, especially rule 11, is applicable to the procedure for enforcing the rights of the charterer.

ART. 668. If the consignee should not be found or should refuse to receive the cargo, the judge or court, at the instance of the captain, shall be obliged to order its deposit and the sale of the merchandise in so far as necessary to pay the freights and other expenses on the same.

The sale shall likewise take place when the goods deposited run the risk of deteriorating or by reason of their condition or for other reasons the expenses of preservation and custody should not be in proportion.

The law of civil procedure for the Peninsula, in its articles 2122 et seq., and those for Cuba, Porto Rico, and the Philippines in their equivalents treat of the mode of procedure for the sale of commercial goods.

§ 2.—*Rights and obligations of owners.*

ART. 669. The owners or the captain shall observe in charter parties the capacity of the vessel or that expressly designated in the registry of the same, a difference greater than 2 per cent between that stated and her true capacity not being permissible.

If the owners or the captain should contract to carry a greater amount of cargo than the vessel can hold, in view of her burden, they shall indemnify the freighters whose contracts they do not fulfill for the losses they may have caused them by reason of their default, according to the cases, viz:

If the vessel has been chartered by one freighter only, and there should appear to be an error or fraud in her capacity, and the charterer should not wish to rescind the contract, when he has a right thereto, the charter should be reduced in proportion to the cargo the vessel can not receive, the person from whom the vessel is chartered

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being furthermore obliged to indemnify the charterer for the losses he may have caused.

If, on the contrary, there should be several charter parties, and by reason of the want of space all the cargo contracted for can not be received, and none of the charterers desires to rescind the contract, preference shall be given to the person who has already loaded and arranged the freight in the vessel, and the rest shall take the place corresponding to them in the order of the dates of their contracts.

Should there be no priority, the charterers may load, if they wish, pro rata of the amounts of weight or space they may have engaged, and the person from whom the vessel was chartered shall be obliged to indemnify the loss and damage.

Article 2168 of the law of civil procedure for the Peninsula and 2119 of that amended for Cuba and Porto Rico are applicable to the provisions contained in the last two paragraphs of this article.

ART. 670. If the person from whom the vessel is chartered, after receiving a part of the freight, should not find sufficient to make up at least three-fifths of the amount the vessel can hold, at the price he may have fixed, he may substitute for the transportation another vessel inspected and declared suitable for the same voyage, the expenses of transfer being defrayed by him, as well as the increase, should there be any, in the price of the charter. Should he not be able to make this change, the voyage shall be undertaken at the time stated; and should no time have been fixed, within fifteen days from the time of beginning to load, should nothing to the contrary have been stipulated.

If the owner of the part of the freight already loaded should procure some more at the same price and under similar or proportionate conditions to those accepted for the freight received, the person from whom the vessel is chartered or the captain can not refuse to accept the rest of the cargo; and should he do so, the freighter shall have a right to demand that the vessel put to sea with the cargo she may have on board.

ART. 671. After three-fifths of the vessel is loaded, the person from whom she is chartered can not, without the consent of the charterers or freighters, substitute the vessel designated in the charter party by another one, under the penalty of making himself thereby liable for all the loss and damages occurring during the voyage to the cargo of the person who did not consent to the change.

ART. 672. If the vessel has been chartered in whole, the captain can not, without the consent of the person chartering her, accept freight from any other person; and should he do so, said charterer may force him to unload it and require him to indemnify him for the losses suffered thereby.

ART. 673. The person from whom the vessel is chartered shall be liable for all the losses caused the charterer by reason of the voluntary delay of the captain in putting to sea, according to the rules prescribed, provided he has been requested to put to sea at the proper time through a notary or judicially.

ART. 674. If the freighter should carry to the vessel more freight than that contracted for, the excess may be admitted in accordance with the price stipulated in the contract if it can be well stowed without injuring the other freighters, but if in order to stow said freight

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it should be necessary to stow it in such manner as to throw the vessel out of trim the captain must refuse it or unload it at the expense of its owner.

The captain may likewise, before leaving the port, unload the merchandise placed on board clandestinely, or transport it, if he could do so and keep the vessel in trim, demanding by way of freightage the highest price which may have been stipulated for said voyage.

ART. 675. If the vessel has been chartered to receive the cargo in another port, the captain shall appear before the consignee designated in the charter party, and, should the latter not deliver the cargo to him, he shall inform the person who chartered the vessel, and await his instructions, and the lay days agreed upon shall begin to run, or those allowed by custom in the port, unless there is a special agreement to the contrary.

Should the captain not receive an answer within the time necessary therefor, he shall make efforts to find freight; and should he not find any after the lay days and extra lay days have elapsed, he shall make a protest and return to the port where the charter was made.

The person who charters the vessel shall pay the charter in full, discounting the freight which may have been earned on the merchandise which may have been carried on the voyage out or on the return trip, if carried for the account of third persons.

The same shall be done if a vessel, having been chartered for the round trip, should not be given any cargo for her return.

ART. 676. The captain shall lose the freight and shall indemnify the freighters if the latter should prove, even against the certificate of inspection, should one have taken place at the port of departure, that the vessel was not in a condition to navigate at the time of receiving the cargo.

ART. 677. The charter party shall be enforced if the captain should not have any instructions from the charterer, and a declaration of war or a blockade should take place during the voyage.

In such case the captain shall be obliged to make the nearest safe and neutral port, and request and await orders from the freighter; and the expenses incurred and salaries earned during the detention shall be paid as general average.

If, by orders of the freighter, the cargo should be discharged at the port of arrival, the freight for the voyage out shall be paid in full.

ART. 678. If the time necessary, in the opinion of the judge or court, in which to receive orders from the freighter should have elapsed without the captain having received any instructions, the cargo shall be deposited, and it shall be liable for the payment of the freight and expenses incurred by reason thereof, which shall be paid from the proceeds of the part first sold.

With regard to the mode of procedure for the deposit and sale of merchandise referred to in this article, we believe that article 2161 of the law of civil procedure in force in the Peninsula is applicable thereto. (Article 2122 of that for Cuba and Porto Rico.)

§ 3.—*Obligations of charterers.*

ART. 679. The charterer of an entire vessel may subcharter the whole or part thereof for the amounts he may consider most convenient, without the captain being allowed to refuse to receive on board the freight delivered by the second charterers, provided the

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conditions of the first charter are not changed, and that the person from whom the vessel is chartered be paid the full price agreed upon even though the full cargo is not embarked, with the limitation established in the next article.

ART. 680. A charterer who does not make up the full cargo he bound himself to ship shall pay the freightage of the amount he did not ship, if the captain did not take other freight to make up the cargo of the vessel, in which case he shall pay the first charterer any difference there may be.

ART. 681. If the charterer should ship goods different from those indicated at the time of executing the charter party, without the knowledge of the person from whom the vessel was chartered or of the captain, and should thereby give rise to losses, by reason of confiscation, embargo, detention, or other causes, to the person from whom the vessel was chartered or to the shippers, the person giving rise thereto shall be liable with the value of his shipment and furthermore with his property, for the full indemnity to all those injured through his offense.

ART. 682. If the merchandise shipped should have been for the purpose of illicit commerce, and were taken on board with the knowledge of the person from whom the vessel was chartered or of the captain, the latter, jointly with the owner of the same, shall be liable for all the losses which may be caused the other shippers, and even though it may have been agreed, they can not demand any indemnity whatsoever of the person from whom the vessel was chartered for the damage caused the same.

ART. 683. In case of making a port to repair the hull, machinery, or equipment of the vessel, the freighters shall be obliged to wait until the vessel is repaired, being permitted to unload her at their own expense should they deem it advisable.

If, for the benefit of the cargo subject to deterioration, the freighters, or the court, or the consul, or the competent authority in a foreign land should order the merchandise to be unloaded, the expense of loading and unloading shall be for the account of the former.

Articles 2147 to 2150 of the law of civil procedure for the Peninsula, 2108 of that for Cuba and Porto Rico, and 2068 of that for the Philippines are applicable to the foregoing in so far as the mode of procedure is concerned.

ART. 684. If the charterer, without the occurrence of any of the cases of force majeure mentioned in the foregoing article, should wish to unload his merchandise before arriving at the port of destination, he shall pay the full charter, the expenses of the stop made at his request, and the loss and damage caused the other freighters, should there be any.

ART. 685. In charters for transportation of general freight any of the freighters may unload the merchandise before the beginning of the voyage, and shall pay half the freight, the expense of shipping and reshipping the cargo, and any other damage which may be caused the other shippers.

With regard to the mode of procedure see articles 2151 and 2152 of the law of civil procedure for the Peninsula, 2112 and 2113 of that for Cuba and Puerto Rico, and 2072 and 2073 of that for the Philippines.

ART. 686. After the vessel has been unloaded and the cargo placed at the disposal of the consignee, the latter must immediately pay the captain the freight due and the other expenses incurred by reason of said cargo.

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The primage must be paid in the same proportion and at the same time as the freightage, all the changes and modifications to which the latter should be subject also governing the former.

The mode of procedure to enforce the right granted by the first part of this article is that prescribed in article 1544, number 1, together with article 1545 of the law of civil procedure for the Peninsula, 1543 and 1544 of that for Cuba and Puerto Rico and 1527 and 1528 of that for the Philippines.

ART. 687. The charterers and freighters can not abandon merchandise damaged on account of the character of the goods or by reason of an accidental case, for the payment of the freight and other expenses.

The abandonment shall be proper, however, if the cargo should consist of liquids and should they have leaked out, there not remaining in the coverings more than one-quarter of their contents.

Articles 2156 and 2157 of the law of civil procedure for the Peninsula, 2117 and 2118 of that for Cuba and Puerto Rico, and 2077 and 2078 of that for the Philippines, are related to the article we annotate.

§ 4.—*Total or partial rescissions of charter parties.*

ART. 688. A charter party may be annulled at the request of the charterer:

1. If before loading the vessel he should abandon the charter, paying half of the charter agreed upon.

2. If the capacity of the vessel should not agree with that stated in the certificate of the tonnage, or if there is an error in the statement of the flag under which she sails.

3. If the vessel should not be placed at the disposal of the charterer within the period and in the manner agreed upon.

4. If, after the vessel has put to sea, she should return to the port of departure, on account of risk of pirates, enemies, or bad weather, and the freighters should agree to unload her.

In the second and third cases the persons from whom the vessel was chartered shall indemnify the charterer for the losses he may suffer.

In the fourth case the person from whom the vessel was chartered shall have a right to the charter in full for the voyage out.

If the charter should have been made per month, the charterers shall pay the full charter value for one month, if the voyage were to a port in the same waters, and two months, if the voyage were to a port in different waters.

From one port to another of the Peninsula and adjacent islands, the charter for one month only shall be paid.

5. If a vessel should make a port during the voyage in order to make urgent repairs and the freighters should perfer to dispose of the merchandise.

When the delay does not exceed thirty days, the freighters shall pay the full charter for the voyage out.

Should the delay exceed thirty days, they shall only pay the charter in proportion to the distance covered by the vessel.

ART. 689. At the request of the person from whom the vessel is chartered the charter party may be rescinded—

1. If the charterer at the termination of the extra lay days does not remove the cargo.

In such case the charterer must pay half the charter stipulated besides the demurrage for the lay days and extra lay days elapsed.

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2. If the person from whom the vessel was chartered should sell her before the charterer has begun to load her and the purchaser should load her for his own account.

In such case the vendor shall indemnify the charterer for the losses he may suffer.

If the new owner of the vessel should not load her for his own account the charter party shall be respected, and the vendor shall indemnify the purchaser if the former did not inform him of the charter pending at the time of making the sale.

ART. 690. The charter party shall be rescinded and all actions arising therefrom shall be extinguished if, before the vessel puts to sea from the port of departure, any of the following cases should occur:

1. A declaration of war or interdiction of commerce with the power whose ports the vessel was going to visit.

2. A condition of blockade of the port of destination of said vessel, or the breaking out of an epidemic after the contract was executed.

3. The prohibition to receive the merchandise of the vessel at the said port.

4. An indefinite detention, by reason of an embargo of the vessel by order of the government or for any other reason independent of the will of the agent.

5. The impossibility of the vessel to navigate, without fault of the captain or agent.

The unloading shall be made for the account of the charterer.

ART. 691. If the vessel can not put to sea on account of the closing of the port of departure, or any other temporary cause, the charter shall be in force without any of the contracting parties having a right to claim damages.

The allowances and wages of the crew shall be considered as general average.

During the interruption the charterer may, for his own account, unload and load at the proper time the merchandise, paying demurrage if the reloading should continue after the reason for the detention has ceased.

ART. 692. A charter party shall be partially rescinded, unless there is an agreement to the contrary, and the captain shall only be entitled to the charter for the voyage out, if, by reason of a declaration of war, closing of ports, or interdiction of commercial relations during the voyage, the vessel should make the port designated for such a case in the instructions of the charterer.

§ 5.—*Passengers on sea voyages.*

ART. 693. Should the passage price not have been agreed upon, the judge or court shall summarily fix it, after a statement of experts.

Although the law of civil procedure does not establish anything on this particular, because, as we have said, these provisions are new ones in our laws, we believe that the provisions applicable to summarily fix the price of the passage are the articles which treat of voluntary jurisdiction in commercial transactions, among others, article 2117, which refers to the appointment of experts.

ART. 694. Should the passenger not arrive on board at the time fixed, or should leave the vessel without permission from the captain, when the latter is ready to leave the port, the captain may continue the voyage and demand the full passage price.

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ART. 695. The right to passage, if issued to a certain person, can not be transferred without the consent of the captain or of the consignee.

ART. 696. If before beginning the voyage the passenger should die, his heirs shall not be obliged to pay but half of the passage agreed upon.

If there should be understood in the price stipulated the expenses of board, the judge, or court, hearing experts if he considers it necessary, shall fix the amount to be paid the vessel.

Should another passenger be received in the place of the deceased, nothing shall be paid by said heirs.

ART. 697. If before beginning the voyage it should be suspended through the sole fault of the captain or agent, the passengers shall be entitled to have their passage refunded and to recover loss and damages; but if the suspension was due to an accidental cause, or to force majeure, or to any other cause independent of the captain or agent, the passengers shall only be entitled to the return of the passage.

ART. 698. In case a voyage already begun should be interrupted the passengers shall be obliged only to pay the passage in proportion to the distance covered, and shall not be entitled to recover loss and damages if the interruption were due to an accidental cause or to force majeure, but have a right to indemnity if the interruption should have been caused by the captain exclusively. If the interruption should be by reason of the disability of the vessel, and the passenger should agree to await her repair, he can not be required to pay any increased price of passage, but his support during the delay shall be for his own account.

In case the departure of the vessel is delayed the passengers have a right to remain on board and to board for the account of the vessel, unless the delay is due to an accidental cause or to force majeure. If the delay should exceed ten days, the passengers who request it shall be entitled to the return of the passage; and if it were due exclusively to the captain or agent they may furthermore demand indemnity for losses and damages.

A vessel which is exclusively destined to the transportation of passengers must take them directly to the port or ports of destination, no matter what the number of passengers may be, making all the stops indicated in her itinerary.

ART. 699. After the contract has been rescinded, before or after the commencement of the voyage, the captain shall have a right to claim payment for what he may have furnished the passengers.

ART. 700. In all that relates to the preservation of order and police on board the vessel the passengers shall conform to the provisions of the captain, without any distinction whatsoever.

ART. 701. The convenience or the interest of the passengers shall not obligate nor empower the captain to stand in shore or enter places which may take the vessel out of her course, nor to remain in the ports he must or is under the necessity of touching for a period longer than that required for the business of the navigation.

ART. 702. Should there not be an agreement to the contrary, there shall be understood as included in the price of the passage the accommodation of the passengers during the voyage; but should said board be for the account of the latter, the captain shall be under the obliga-

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tion, in case of necessity, to furnish them the victuals at a reasonable price necessary for their maintenance.

See the provisions of article 616 of this code.

ART. 703. A passenger shall be looked upon as a shipper in so far as the goods he carries on board are concerned, and the captain shall not be liable for what said passenger may preserve under his immediate and private custody unless the damage arises from an act of the captain or of the crew.

ART. 704. The captain, in order to collect the price of the passage and expenses of maintenance, may retain the goods belonging to the passenger, and in case of the sale of the same he shall be given preference to the other creditors, a procedure identical to that for the collection of freights being observed.

ART. 705. In case of the death of a passenger during the voyage the captain is authorized, with regard to the body, to take the steps required by the circumstances, and shall carefully take care of the papers and goods there may be on board belonging to the passenger, observing the provisions of case No. 10 of article 612 with regard to members of the crew.

§ 6.—*Bills of lading.*[a]

ART. 706. The captain and the freighter of the vessel are obliged to draft the bill of lading, in which there shall be stated—

1. The name, registry, and tonnage of the vessel.
2. The name of the captain and his domicile.
3. The port of loading and that of unloading.
4. The name of the shipper.
5. The name of the consignee, if the bill of lading is issued to order.
6. The quantity, quality, number of packages, and marks of the merchandise.
7. The freight and the primage stipulated.

The bill of lading may be issued to bearer, to order, or in the name of a specific person, and must be signed within twenty-four hours after the cargo has been received on board, the freighter being allowed to request the unloading thereof at the expense of the captain should he not sign it, and in every case indemnity for the loss and damage suffered thereby.

ART. 707. Four true copies of the original bill of lading shall be made, all of which shall be signed by the captain and by the freighter. Of these copies the freighter shall keep one and send another to the consignee; the captain shall take two, one for himself and another for the agent.

There may, furthermore, be made as many copies of the bill of lading as may be considered necessary by the persons interested; but when it is issued to order or to the bearer there shall be stated in all the copies, be they either of the first four or of the subsequent ones, the destination of each one, stating whether it is for the agent, for the captain, for the freighter, or for the consignee. If the copy sent to the latter should be duplicated there must be stated in said duplicate

[a] The bill of lading is the receipt which the captain gives the shipper or freighter, and in which there is stated the fact of the shipment of the goods in question and the circumstances prescribed by law. It is a kind of supplement to the charter party.

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this fact, and that it is not valid except in case of the loss of the first one.

ART. 708. The bills of lading issued to the bearer sent to the consignee shall be transferable through the actual delivery of the instrument; and by virtue of an indorsement, those issued to order.

In either case, the person to whom the bill of lading is transferred shall acquire all the rights and actions of the assignee or indorser with regard to the merchandise mentioned in the same.

A bill of lading includes the right to an execution, and the law of civil procedure for the Peninsula in its article 1544, number 1, together with the same number of article 1545; that for Cuba and Porto Rico in articles 1542 and 1543, and that for the Philippines in articles 1526 and 1527, include them among the instruments by virtue of which judicial compulsion may be brought to bear, treated of in title 16 of book 2.

ART. 709. A bill of lading drawn up in accordance with the provisions of this title shall be proof as between all those interested in the cargo and between the latter and the underwriters, proof to the contrary being reserved by the latter.

ART. 710. Should the bills of lading not agree, and there should not be observed any correction or erasure in any of them, those possessed by the freighter or consignee signed by the captain shall be proof against the captain or agent in favor of the consignee or freighter; and those possessed by the captain or agent signed by the freighter shall be proof against the freighter or consignee in favor of the captain or agent.

ART. 711. The legitimate holder of a bill of lading who does not present it to the captain of the vessel before her unloading, obliging the latter thereby to unload it and place it in deposit, shall be liable for the cost of warehousing and other expenses arising therefrom.

ART. 712. The captain can not himself change the destination of merchandise. In admitting this change at the instance of the freighter, he must first take up the bills of lading he may have issued, under the penalty of being liable for the cargo to the legitimate holder of the same.

ART. 713. If before delivering the cargo a new bill of lading should be demanded of the captain, it being alleged that the previous ones are not presented on account of their loss or for any other sufficient cause, he shall be obliged to issue it, provided security for the value of the cargo is given to his satisfaction; but without changing the consignment and stating therein the circumstances prescribed in the last paragraph of article 707, when the bills of lading referred to therein are in question, under the penalty otherwise to be liable for said cargo if not properly delivered through his fault.

ART. 714. If before the vessel puts to sea the captain should die or should discontinue in his position through any accident, the freighter shall have a right to demand the new captain to ratify the first bills of lading, and the latter must do so, provided all the copies previously issued be presented or returned to him, and it should appear from an examination of the cargo that they are correct.

The expenses arising from the examination of the cargo shall be defrayed by the agent, without prejudice to the right of action of the latter against the first captain, if he ceased to be such through his own fault. Should said examination not be made, it shall be understood that the new captain accepts the cargo as it appears from the bills of lading issued.

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ART. 715. Bills of lading will give rise to a most summary action or to judicial compulsion, according to the case, for the delivery of the cargo and the payment of the freightage and proper expenses.

With regard to this point, see articles 1544 to 1559 of the law of civil procedure for the Peninsula, 1542 to 1557 of that for Cuba and Porto Rico, and 1526 et seq. of that for the Philippines.

ART. 716. If several persons should present bills of lading issued to the bearer or to order, indorsed in their favor, demanding the same merchandise, the captain shall prefer in delivering the same, the person presenting the copy first issued, with the exception of the case when the later one was issued on account of the loss of the first one, and if they are held by different persons.

In such case, as well as when second or subsequent copies issued without this proof are presented, the captain shall apply to the judge or court, so that he may order the deposit of the merchandise, and that through him it may be delivered to the proper person.

ART. 717. The delivery of the bill of lading shall effect the cancellation of all the provisional receipts of prior date given by the captain or his subalterns for partial deliveries of the cargo which may have been made.

ART. 718. After the cargo has been delivered, the bills of lading which the captain signed shall be returned to him, or at least the copy by reason of which the delivery is made, with the receipt for the merchandise mentioned therein.

Delay on the part of the consignee shall make him liable for the damages which may be caused the captain thereby.

SECTION SECOND.—*Loans on bottomry and respondentia.*

ART. 719. A loan on bottomry or respondentia shall be considered that of which the repayment of the sum loaned and the premium stipulated, under any condition whatsoever, depends on the safe arrival in port of the goods on which it is made, or of their value in case of accident.

ART. 720. Loans on bottomry or respondentia may be executed—

1. By means of a public instrument.
2. By means of a bond signed by the contracting parties and the broker who took part therein.
3. By means of a private instrument.

In whatever manner this contract is executed, it shall be entered in the certificate of the registry of the vessel and shall be recorded in the commercial registry, without which requisites the credits originating from the same shall not have, with regard to other credits, the preference which, according to their nature, they should have, although the obligation shall be valid between the contracting parties.

The contracts made during a voyage shall be governed by the provisions of articles 583 and 611, and shall be effective with regard to third persons from the date of their execution, if they should be recorded in the commercial registry of the port of registry of the vessel before eight days have elapsed from the date of her arrival. If said eight days should elapse without the record having been made in the commercial registry, the contracts made during the voyage of a vessel shall not have any effect with regard to third persons, except from the day and date of their entry.

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In order that the bonds of the contracts celebrated in accordance with No. 2 may have force of law, they must conform to the registry of the broker who took part therein. In those celebrated in accordance with No. 3 the acknowledgment of the signature must precede.

Contracts which are not reduced to writing shall not be the basis for a judicial action.

Article 52 of the commercial registry regulations and 1429, No. 6, of the law of civil procedure for the Peninsula, 1427 of that for Cuba and Porto Rico, and 1411 of that for the Philippines, are in addition to and explain the provisions of the article we annotate.

See furthermore with regard to the provisions of the fourth and fifth paragraphs of this article, article 580, No. 9, and 731 of this code.

ART. 721. In a bottomry or respondentia bond there must be stated:

1. The kind, name, and registry of the vessel.
2. The name, surname, and domicile of the captain.
3. The name, surname, and domicile of the person making and those of the person receiving the loan.
4. The amount of the loan and the premium stipulated.
5. The time for repayment.
6. The goods pledged to secure repayment.
7. The voyage for which the risk is taken.

ART. 722. The bonds may be issued to order, in which case they shall be transferable by indorsement, and the assignee shall acquire all the rights and run all the risks corresponding to the indorser.

ART. 723. Loans may be made in goods and in merchandise, their value being fixed in order to determine the amount of the loan.

ART. 724. The loans may be constituted separately or jointly—

1. On the hull of the vessel.
2. On the rigging.
3. On the equipment, provisions, and fuel.
4. On the engine, if the vessel is a steamer.
5. On the cargo.

If the loan is constituted on the hull of the vessel, there shall be understood as also subject to the liability of the loan, the rigging, equipment and other goods, fuel, steam engines, and the freight earned during the voyage subject to the loan.

If the loan is made on the cargo, all that constitutes the same shall be subject to the repayment; and if on a particular object of the vessel or of the cargo, the object exclusively and specifically mentioned only shall be liable.

ART. 725. No loans can be made on the salaries of the crew, nor on the profits which it is expected to earn.

ART. 726. If the lender should prove that he loaned a larger amount than the value of the article liable for the loan, by reason of fraudulent measures on the part of the person taking the loan, said loan shall only be valid for the amount at which said object is appraised by experts.

The surplus principal shall be returned with legal interest for the time of the duration of the disbursement.

ART. 727. If the full amount of the loan contracted to load the vessel should not be made use of for said cargo, the surplus shall be returned before clearing.

The same procedure shall be observed with regard to the goods taken as a loan if it should not have been possible to load them.

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ART. 728. The loan which the captain takes at the point of residence of the owners of the vessel shall only affect that part of the latter which belongs to the captain, if the other owners or their agents should not have given their express authorization thereto or should not have taken part in the transaction.

If one or more of the owners should be requested to furnish the amount necessary to repair or provision the vessel, and should not do so within twenty-four hours, the interest which the parties in default may have in the vessel shall be liable for the loan in the proper proportion.

Outside of the residence of the owners the captain may contract loans in accordance with the provisions of articles 583 and 611.

Rule No. 8 of articles 2161 of the law of civil procedure for the Peninsula, 2122 of that for Cuba and Porto Rico, and 2082 of that for the Philippines, amplify the provisions contained in the second paragraph of this article.

ART. 729. Should the goods on which money is taken not be subjected to any risk, the contract shall be considered an ordinary loan, the borrower being under the obligation to return the principal and interest at the legal rate, if the interest stipulated should not have been lower.

ART. 730. Loans made during the voyage shall have preference to those made before the clearing of the vessel, and they shall be graduated by the inverse order to that of their dates.

The loans for the last voyage shall have preference over prior ones.

Should several loans have been made at a port made under stress and for the same purpose, all of them shall be paid pro rata.

See article 720 of this code.

ART. 731. The actions which may be brought by the lender shall be extinguished by the absolute loss of the goods on which the loan was made, if said loss arose from an accident of the sea at the time and during the voyage designated in the contract, and should it be proven that the cargo was on board; but this shall not take place if the loss were caused by reason of a defect in the goods, or through the fault or malice of the borrower, or through barratry on the part of the captain, or if it were caused by damages suffered by the vessel by reason of being engaged in contraband, or if it arose through loading the merchandse on a vessel other than that desgnated in the contract, unless this change should have been made by reason of force majeure.

The proof of the loss is incumbent upon the person who received the loan, as well as the proof of the existence in the vessel of the goods declared to the person making the loan as the object thereof.

See article 799 of this code.

ART. 732. Lenders on bottomry or respondentia shall suffer in proportion to their respective interests, the general average which may take place in the goods on which the loan was made.

In particular averages, in the absence of an express agreement between the contracting parties, the lender on bottomry or respondentia shall also contribute in proportion to his respective interest, should it not belong to the kind of risks excepted in the foregoing article.

ART. 733. Should it not have been stated in the contract for what period the lender runs the risk, he shall be liable with regard to the vessel, engines, rigging, and equipment from the moment said vessel puts to sea until she drops anchor in the port of destination, and with

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regard to the merchandise, from the time it is loaded on the shore or wharf of the port of shipment until unloaded in the port of consignment.

ART. 734. In case of shipwreck the amount liable for the return of the loan shall be reduced to the proceeds of the goods saved, after the costs of the salvage have been deducted.

If the loan were on the vessel or any of her parts, the freight money earned during the voyage for which said loan was contracted shall also be liable for its payment, in so far as possible.

ART. 735. If the same vessel should be the object of a loan on bottomry or respondentia and marine insurance, the value of what may be saved shall be divided, in case of shipwreck, between the lender and the underwriter, in proportion to the legitimate interest of each one, taking into consideration, for this purpose only, the principal with relation to the loan, and without prejudice to the right of preference of other creditors in accordance with article 580.

ART. 736. If there should be delay in the repayment of the principal or premiums of the loan, the former only shall bear interest.

See article 317 of this code.

SECTION THIRD.—*Marine insurance.*

§ 1.—*Form of contract.*

ART. 737. In order that a marine insurance contract be valid, it must be reduced to writing in a policy signed by the contracting parties.

This policy shall be drafted and signed in duplicate, one copy being kept by each of the contracting parties.

ART. 738. The policy of the insurance contract shall contain, besides the conditions unrestrictedly established by the persons interested, the following requisites:

1. Date of the contract, stating the time it is consummated.
2. Names, surnames, and domiciles of the underwriter and of the insured.
3. Capacity in which the insured acts, stating whether for himself or for the account of another.

In the latter case the name, surname, and domicile of the person in whose name he takes out the insurance.

4. Name, port, flag, and registry of the vessel insured, or of the vessel carrying the goods insured.
5. Name, surname, and domicile of the captain.
6. Port or roadstead where the merchandise insured has been or is to be loaded.
7. Port whence the vessel left or is to leave.
8. Ports or roadsteads where the vessel is to load, unload, or stop for any reason whatsoever.
9. Nature and kind of the goods insured.
10. Number of bales or packages, of whatsoever class, and their marks, should they have any.
11. Time of the beginning and conclusion of the risk.
12. Amount insured.
13. Price agreed upon for the insurance, and place, time, and manner of payment thereof.
14. Amount of the premium corresponding to the voyage out, and amount to the return voyage, if the insurance were for the round trip.

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15. Obligation of the underwriter to pay the damage caused to the goods insured.

16. The place, period, and manner in which payment is to be made.

ART. 739. Insurance contracts and policies authorized by consular agents abroad, if the contracting parties or any of them should be Spaniards, shall have the same legal value as though they were drafted with the intervention of a broker.

ART. 740. There may be included in the same contract and policy the insurance of the vessel and that of the cargo, fixing the value of either and mentioning the amount of insurance on each object, without which statement the insurance shall be null.

Different premiums for each article insured may be fixed in the policy.

Several underwriters may sign the same policy.

ART. 741. In the insurance of merchandise the specific declaration of the same may be omitted, as well as of the vessel to carry it, when these details are not known by the insured.

If the vessel in such case should suffer an accident on the seas, the insured shall be under the obligation to prove, besides the loss of the vessel, her departure from the port of loading, the shipment for his account of the goods insured, and the value thereof, to demand indemnity.

ART. 742. The insurance policies may be issued to the order of the insured, in which case they shall be negotiable.

§ 2.—*Goods which can be insured and their appraisement.*

ART. 743. The following can be the subject of marine insurance:

1. The hull of a vessel in ballast or loaded, in a port or on a voyage.
2. The rigging.
3. The engine, should the vessel be a steamer.
4. All the equipment and articles which constitute the fittings.
5. Provisions and fuel.
6. The amounts secured on bottomry or respondentia.
7. The amount of the freights and the probable profit.
8. All the commercial goods subject to the risk of navigation the value of which can be specifically fixed.

ART. 744. All or a part of the goods mentioned in the foregoing article may be insured jointly or separately, in time of peace or during war, for a voyage or for a definite time, for a single voyage or for a round trip, on good or bad advices.

ART. 745. If it should be generally stated in the policy that the insurance is taken on the vessel, there shall be understood therein the engines, rigging, equipment, and all that belongs to the vessel; but her cargo shall not be included even though it belongs to the shipowner.

In a general insurance of merchandise, there shall not be included therein coined metals, or metals in ingots, precious stones, nor munitions of war.

ART. 746. The insurance of the freightage may be taken by the shipper, by the shipowner, or by the captain, but the latter can not insure the advance they may have received on account of their freight unless they have expressly stipulated that, in case the freight is not earned by reason of shipwreck or loss of the cargo, they shall return the amount received.

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ART. 747. In freight insurance the amount thereof must be stated, which can not exceed the amount appearing in the agreement.

ART. 748. The insurance of profits shall be governed by the stipulations agreed to by the contracting parties, but there shall be stated in the policy:

1. The specific amount at which the insurer fixes the profit, after the cargo has arrived safely and been sold at the port of destination.

2. The obligation of reducing the insurance if, comparing the amount obtained at the sale, after discounting the expenses and freights, with the purchase price, it should appear less than that fixed in the insurance.

ART. 749. The underwriter may have the goods insured by him reinsured by others, in whole or in part, with the same or with a different premium. The insured may likewise insure the cost of the insurance and the risk he may run in collecting the insurance from the first underwriter.

ART. 750. If the captain should take out insurance, or the owner of the goods insured should be on the same vessel which carries them, 10 per cent shall always be left to his risk should there be no agreement to the contrary.

ART. 751. In the insurance of a vessel there shall always be understood that the insurance only covers four-fifths of her value, and that the insured runs the risk for the remaining fifth, unless an express agreement to the contrary is included in the policy.

In such case, and in that of the foregoing article, there shall be discounted from the insurance the amount of the loans taken on bottomry or respondentia.

ART. 752. The signing of the policy shall constitute a legal presumption that the underwriters accepted the appraisement made therein of the goods insured as correct, excepting cases of malice or fraud.

If the appraisement should appear to be exaggerated, the proceedings shall be according to the cases, viz:

1. If the exaggeration should have arisen from error, and not from malice imputable to the insured, the insurance shall be reduced to its true value, fixed by the contracting parties by common consent, or through an expert opinion. The insured shall return the excess of the premium received, retaining, however, one-half per cent of said excess.

If the exaggeration should have been fraudulent on the part of the insured, and the underwriter proves it, the insurance shall be null for the insured, and the underwriter shall gain the premium without prejudice to the criminal action which he may bring.

ART. 753. Reduction to the value of the national currency, if the value were fixed in foreign money, shall be made at the current rate at the place and on the day on which the policy was signed.

With regard to the provisions of this article, the supreme court declared in an opinion of January 18, 1881: That every stipulation made in foreign money shall be converted for payment into its equivalent in money of the kingdom in accordance with the rate where the contract is to be consummated, and that although a pound sterling is imaginary money in Spain, it is used and generally admitted in commerce, and in drafts, there being no difficulty in fixing its equivalent in pesetas by means of the official exchange daily announced in the exchange and in the *Gaceta de Madrid*.

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ART. 754. If, at the time of making the contract, the value of the goods insured has not been specifically fixed, it shall be determined:

1. By the invoices of consignment.

2. By a statement of brokers or experts, who shall act, taking as a basis of their judgment the price of the goods in the port of departure, adding thereto the expenses of shipment, freight, and customs.

If the insurance is on goods returning from a country where commerce is only exchange, the value shall be fixed according to that of the goods exchanged in the port of departure, with all the expenses.

§ 3.—*Obligations of the underwriter and of the insured.*

ART. 755. The underwriters shall indemnify the loss and damage which the articles insured may suffer for any of the following causes:

1. Stranding or embayment of the vessel, with or without breakage.
2. Gales.
3. Shipwreck.
4. Accidental collision.
5. Change of course during the voyage of the vessel.
6. Jettison.
7. Fire or explosion, if it occurs in merchandise, whether on board or on land, provided it has been removed by order of a competent authority to repair the vessel or to benefit the cargo, or fire by reason of spontaneous combustion in the coal bunkers of the vessel.
8. Capture.
9. Spoliation.
10. Declaration of war.
11. Embargo by order of the Government.
12. Retention by order of a foreign power.
13. Reprisals.
14. Any other accidents of the sea or risks.

The contracting parties may stipulate the exceptions they may deem proper, mentioning them in the policy, without which requisite they shall have no effect.

Articles 789, 791, 840, 809, number 8, 768, and 806, et seq., of this code are connected with the provisions of this article.

ART. 756. The underwriters shall not be liable for the loss and damage suffered by goods insured by reason of any of the following causes, even though they have not been excluded in the policy:

1. Voluntary change in the voyage or in the vessel, without the express consent of the underwriters.

2. Voluntary separation from a convoy, when it was stipulated that she would travel with one.

3. Extension of the voyage to a port farther off than that designated in the insurance.

4. Arbitrary provisions and contrary to the charter party or to the bill of lading, adopted by order of the shipowner, freighters, or charterers.

5. Barratry on the part of the master, unless it is the object of insurance.

6. Waste, leakage, and expenses arising from the nature of the goods insured.

7. Absence of the instruments prescribed in this code, in the marine ordinances and regulations, or those of navigation, or omissions of

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any other class whatsoever on the part of the captain, in contravention to administrative provisions, unless the barratry of the master should have been taken for the account of the underwriter.

In any of these cases the underwriters shall collect the premium, provided they began to run the risk.

The supreme court, in an opinion of November 15, 1879, established: That there is not in the code of commerce nor in the common law any provision which restrains the owner of an insured vessel from the privilege of conveying the same or from removing the captain during the period of the insurance without the knowledge or consent of the underwriter, nor shall there be considered as arbitrary provisions and contrary to the charter party the resolutions adopted by the agent with regard to the captain, officers, and crew granted them in articles 264 et seq. of the old code.

ART. 757. In the insurance of cargo taken for a round trip, if the insured should not find any freight for the return voyage or should only be able to get less than two-thirds, the return premium shall be reduced in proportion to the cargo brought, the underwriter being furthermore granted one-half per cent for the part he does not carry.

However, no reduction shall be allowed if the cargo was lost on the voyage out, unless there is a special agreement modifying the provisions of this article.

ART. 758. If the cargo should have been insured by several underwriters for different amounts, but without specifically mentioning the objects of the insurance, indemnification shall be paid, in case of loss or damage, by all the underwriters in proportion to the amount insured by each one.

ART. 759. If different vessels should be designated to carry the goods insured, but without stating the amount to be shipped on each vessel, the insured may distribute the cargo as may be most convenient for him, or ship it on one vessel only, the liability of the underwriter not being annulled thereby. But if express mention should have been made of the amount insured on each vessel, and the cargo should be put on board in different amounts to those fixed for each one, the underwriter shall not have any further liability than that he may have contracted for each vessel. However, he shall charge one-half per cent of the excess over the amount stipulated which may have been loaded thereon.

If a vessel should be left without any cargo, the insurance with regard to the same shall be understood as annulled by means of the aforementioned payment of one-half per cent on the excess shipped by the other ones.

ART. 760. If by reason of the disability of the vessel before leaving the port, the cargo should be transferred to another one, the underwriters shall be allowed to choose between continuing or annulling the contract and paying the averages which may have occurred; but if the disability should take place after the beginning of the voyage, the underwriters shall run the risk, even though the vessel should have a different tonnage and flag than that designated in the policy.

ART. 761. If the time during which the risks are to run for the account of the underwriter is not fixed in the policy, the provisions of article 733 with regard to loans on bottomry and respondentia shall be observed.

ART. 762. In insurance for a fixed period, the liability of the underwriter shall cease at the time the period fixed expires.

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ART. 763. If for the convenience of the insured, the merchandise should be unloaded at a port closer than that designated as the destination of the voyage, the underwriter shall collect the premium stipulated without any reduction.

ART. 764. There shall be understood as included in the insurance, if not expressly excluded in the policy, the stopping places which it is required to make for the preservation of the vessel or of her cargo.

ART. 765. The insured shall communicate to the underwriter by the first mail following that by which he receives them, and by telegraph, should there be one, the notices referring to the course of the navigation of the vessel insured, and the damages or losses suffered by the goods insured, and shall answer for the loss and damages which may arise through his omission.

See the provisions of article 795 of this code.

ART. 766. If merchandise insured for the account of the captain who commands the vessel on which it was loaded should be lost, the former must prove its purchase to the underwriters by means of the invoices of the vendors; and the shipment and transportation on the vessel, by means of a certificate of the Spanish consul, or competent authority, where there is one, of the port where it was loaded, and by means of the other documents of entry and clearance of the customs-houses.

The insured who carry their own merchandise shall have the same obligations, unless there is an agreement to the contrary.

ART. 767. If an increase in the premium in case of war should have been stipulated, and said increase should not have been fixed, the latter shall be determined in the absence of agreement between the parties interested, by experts appointed in the manner established in the law of civil procedure, taking the circumstances of the insurance and the risks run into consideration.

With regard to the appointment of experts in insurance contracts, see articles 2178 and 2179 of the law of civil procedure for the Peninsula, 2136 and 2137 of that for Cuba and Puerto Rico, and 2096 and 2097 of that for the Philippines.

ART. 768. The gratuitous restitution of the vessel or of the cargo to the captain by the capturers shall redound to the benefit of the respective owners without the obligation on the part of the underwriters to pay the amounts they insured.

ART. 769. All claims arising from insurance contracts must be accompanied with the documents proving—

1. The voyage of the vessel, with the oath of the captain or a certified copy of the log book.

2. The shipment of the goods insured, with the invoice and documents of discharge of the custom-house.

3. The insurance contract, with the policy.

4. The loss of the goods insured, with the documents of number 1, and a statement of the crew, if necessary.

The discount of the goods insured shall furthermore be fixed after an examination by experts.

The underwriters may contradict the claim and they shall be permitted to adduce proof in court.

With regard to the provisions contained in the last paragraph but one of this article, the supreme court established, in an opinion of July 7, 1882: That an insurance company against which a claim has been brought can not be adjudged to pay the amount claimed if the proper appraisal of experts did not previously take place.

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ART. 770. After the said documents have been presented, the underwriter shall, if he finds them correct and the loss proven, pay the insured the indemnity within the period stipulated in the policy, and in the absence of any fixed period, within ten days after the claim.

But if the underwriter should deny the claim and judicially contest it, he may deposit the amount appearing from the proofs, or deliver it to the insured on giving sufficient security, either being decided by the judge or court according to the cases.

ART. 771. If the vessel insured should suffer damage by reason of an accident at sea, the underwriter shall pay only two-thirds of the expenses of repairing, should they be made or not. In the first case the amount of the expenses shall be proven by the means recognized in law, and in the second case it shall be appraised by experts.

Only the agent or captain authorized therefor may decide not to repair the vessel.

See article 751 of this code.

ART. 772. If by reason of the repair the value of the vessel should be increased by more than one-third of that fixed in the insurance, the underwriter shall pay two-thirds of the cost of repair, discounting the greatest value which the latter may have given the vessel.

But if the insured should prove that the greater value of the vessel does not arise from the repairs, but because the vessel is a new one and the damage occurred on the first voyage, or that the engines or rigging and equipment were broken, the deduction of the increase in value shall not be made, and the underwriter shall pay the two-thirds of the costs of repair, in accordance with rule 6 of article 854.

ART. 773. If the costs of the repairs should exceed three-fourths of the value of the vessel, it shall be understood that she is disabled to navigate, and her abandonment shall be proper; and should this declaration not be made the underwriters shall pay the amount of the insurance, after deducting the value of the vessel damaged or of her remains.

ART. 774. When indemnity arising from general averages is in question at the termination of the adjustment, liquidation, and payment of the same, the insured shall turn over to the underwriter all the accounts and documents proving the same produced to claim the indemnity of the amounts which may have been due him. The underwriter shall examine the liquidation in his turn, and should he find it in accordance with the conditions of the policy, he shall be obliged to pay the insured the proper amount within the period stipulated or, in the absence thereof, within the period of eight days.

The sum due shall earn interest from this date.

If the underwriter should not find the liquidation in accordance with the stipulation of the policy, he may bring an action before the judge or court of competent jurisdiction within the said period of eight days, depositing the amount claimed.

ART. 775. In no case can a claim be brought against the underwriter for a sum higher than the total amount of insurance, even though the vessel saved, after an arrival under stress for the repair of damages should be lost, or that the amount to be paid by reason of general average amounts to more than the insurance, or that the cost of different averages and repairs on one voyage or within the period of the insurance, exceeds the amount insured.

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ART. 776. In cases of particular average to the merchandise insured, the following rules shall be observed:

1. All that which may have disappeared by reason of theft, loss, sale on the voyage, deterioration, or by reason of any of the marine accidents included in the insurance contract, shall be proven in accordance with the value of the invoice, or in the absence thereof, by the value given the same in the insurance, and the underwriters shall pay the amount thereof.

2. If the vessel having safely arrived in port, the merchandise should be damaged totally or in part, the experts shall state the value it would have had if it had arrived in good condition, and the value thereof in its damaged condition.

The difference between both net amounts, after deducting furthermore the customs duties, freights, and other similar expenses, shall constitute the value or amount of the average, adding thereto the expenses for the experts and others, should there be any.

If the average should have involved the entire cargo insured the underwriter shall pay the loss resulting; but if it only involves part, the insured shall be paid in the proper proportion.

If the probable profit of the freighter should have been the object of a special insurance it shall be liquidated separately.

ART. 777. After the particular average of the vessel has been fixed by experts, the underwriter shall justify his right in accordance with the provisions at the end of number 9 of article 580, and the insured shall pay in accordance with the provisions contained in articles 858 and 859.

ART. 778. The underwriter can not oblige the insured to sell the object of the insurance in order to fix its value.

ART. 779. If the appraisement of the goods insured should be made in a foreign country, the laws, usages, and customs of the place where it is to be made shall be observed, without prejudice to submitting to the provisions of this code for the proof of the facts.

ART. 780. After the amount underwritten has been paid by the insurer he shall be subrogated in the place of the insured to all the rights and actions which may be brought against the persons who may have caused the loss of the goods insured through their malice or fault.

§ 4.—Cases in which insurance contracts are annulled, rescinded, or modified.

ART. 781. An insurance contract involving the following shall be void:

1. A vessel or merchandise subject to a previous loan on bottomry or respondentia for their full value.

If the loan on bottomry or respondentia should be for the full value of the vessel or merchandise, the insurance with regard to the part over and above the amount of the loan may be allowed to continue in force.

2. The lives of the crew and passengers.

3. The pay of the crew.

4. Goods of illicit commerce in the country of the flag of the vessel.

5. Vessels customarily dedicated to contraband, the damage or loss arising therefrom, in which case the underwriter shall be paid one-half per cent of the amount insured.

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6. A vessel which, without the occurrence of any force majeure preventing it, does not put to sea within six months following the date of the policy, in which case, besides the annulment, a payment of one-half per cent to the underwriter of the sum insured shall be proper.

7. A vessel which does not undertake the voyage contracted for, or goes to a different port from that stipulated, in which case the payment to the underwriter of one-half per cent of the amount insured shall be proper.

8. Articles in the appraisment of which intentional fraud was committed.

ART. 782. If different insurance contracts have been made with regard to the same article without fraud, the first one only shall be valid, provided it covers the full value thereof.

The underwriters of a subsequent date shall be exempted from all liability and shall receive one-half per cent of the amount insured.

If the first contract should not cover the full value of the article insured, the liability for the excess shall be incurred by the subsequent underwriters in order of dates.

ART. 783. The insured shall not be exempted from paying the full premium to the different underwriters if he should not inform the subsequent ones of the rescission of their contracts before the article insured has arrived at the port of destination.

ART. 784. An insurance taken out after the loss, average or safe arrival of the insured article at the port of destination, shall be void whenever it can be reasonably presumed that one or the other had arrived to the knowledge of any of the contracting parties.

This presumption shall exist when the notice has been published in a place and the time necessary to communicate it by mail or by telegraph to the place where the insurance was underwritten has elapsed, without prejudice to the other proofs which may be brought by the parties.

ART. 785. An insurance contract on good or bad advices shall not be annulled unless the knowledge of the occurrence expected or feared by any of the contracting parties at the time of making the contract is proven.

In case of proving the same the defrauder shall pay the underwriter one-fifth of the amount insured, without prejudice to the criminal liability which may be proper.

ART. 786. If the person taking the insurance, with the knowledge of the total or partial loss of the goods insured, should be acting for the account of another, he shall be personally liable for the act as if he had acted for his own account, and if, on the contrary, the agent should be innocent of the fraud committed by the owner insured, all the liabilities shall be incurred by the latter, who shall always be obliged to pay the underwriters the premium agreed upon.

Similar provisions shall govern with regard to the insurer when he underwrites the insurance through an agent and has knowledge of the saving of the articles insured.

ART. 787. If the risk of the goods insured is pending and the underwriter or the insured are declared in bankruptcy, either shall be entitled to demand security, the latter to cover the liability of the risk and the former to obtain the payment of the premium; and if the receivers should refuse to give said security within three days following the demand the contract shall be rescinded.

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Should an accident occur within said three days without the security having been given, there shall be no right to the indemnity nor to the premium of the insurance.

ART. 788. If an insurance has been underwritten fraudulently by several underwriters, and one or more of the same acted in good faith, the latter shall be entitled to receive the full premium of their insurance of those who may have acted in bad faith, the insured being exempted from all liability.

Similar procedure shall be observed with regard to the insured with the underwriters, when any of the former should be guilty of the fraudulent insurance.

§ 5.—*Abandonment of goods insured.*

ART. 789. The insured may abandon for the account of the underwriter the goods insured, demanding of the underwriter the amount stipulated in the policy:

1. In case of shipwreck.
2. In case of disability of the vessel to navigate, by reason of stranding, breakdown, or any other accident of the sea.
3. In case of capture, embargo, or detention by order of the national or a foreign government.
4. In case of the total loss of the goods insured, by such being understood an accident reducing the value insured by three-quarters.

Other damages shall be considered averages and shall be suffered by the proper persons, according to the conditions of the insurance and the provisions of this code.

An abandonment shall not be proper in either of the first two cases when a shipwrecked, stranded, or disabled vessel was floated and repaired to continue the voyage to the port of destination, unless the cost of the repair exceeds three-quarters of the value for which said vessel was insured.

ART. 790. If the vessel should be repaired, the underwriters shall be liable only for the expenses arising from the grounding or other damage the vessel may have suffered.

ART. 791. In cases of shipwreck and capture the insured shall be obliged to personally take the steps advisable under the circumstances, in order to save or recover the goods lost, without prejudice to the abandonment he may make at the proper time; and the underwriter shall be obliged to reimburse him for the legitimate expenses caused by the saving, to the value of the goods saved, which may be attached for nonpayment of said expenses.

ART. 792. If the vessel should be totally disabled to navigate the insured shall be obliged to inform the underwriter thereof, by telegraph if possible, and otherwise, by the first mail following the receipt of the news. The persons interested in the cargo who may be present, or in their absence the captain, shall adopt all the measures possible to take the cargo to the port of destination in accordance with the provisions of this code, in which case all the risks and cost of unloading, storage, reshipment or transfer, excess of freight, and all other expenses, until the goods insured are unloaded at the point designated in the policy, shall be for the account of the underwriter.

ART. 793. Without prejudice to the provisions of the foregoing article, the underwriter shall be allowed a period of six months in

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which to transport the merchandise to its destination, if the disability should have occurred in the seas around Europe from the Straits of Sound to the Bosphorus, and one year if it occurred at a more distant point. Said period shall begin to be counted from the day the insured informed him of the accident.[a]

ART. 793. (Philippines.) Without prejudice to the provisions of the foregoing article, the underwriter shall be allowed a period of six months in which to transport the merchandise to its destination, if the disability should have occurred in the seas around *the Philippines from the ports of China, in the sea of the same name, to those of the Yellow Sea and Straits of Sunda and Malacca*, and one year if it occurred at a more distant point. Said period shall begin to be counted from the day the insured informed him of the accident.

ART. 794. If, notwithstanding the efforts made by the persons interested in the cargo, by the captain and by the underwriters, to transport the merchandise to the port of its destination, in accordance with the provisions of the foregoing articles, no vessel should be found on which to transport it, the owner and insured may abandon the same.

ART. 795. In case of the interruption of the voyage by reason of embargo or forced detention of the vessel, the insured shall be obliged to inform the underwriters thereof as soon as he receives notice of the same, and he can not abandon it until the periods fixed in article 793 have elapsed.

He shall furthermore be obliged to assist the underwriters, in so far as may be in his power, to obtain the raising of the embargo, and must personally take all the steps necessary for the purpose, if the underwriters, being in a remote country, can not act in concurrence with him.

ART. 796. There shall be understood as abandoned with the vessel the freight of the merchandise which may be saved, even though paid in advance, it being considered as belonging to the underwriters, reserving the rights of other creditors in accordance with the provisions of article 580.

ART. 797. The notice shall be understood as received for the limitation of the periods fixed in article 793, from the time it is made public, either through the newspapers, or as a confirmed rumor among the merchants of the residence of the insured, or when it can be proven that the latter received notice of the accident from the captain, consignee, or any correspondent by mail or telegraph.

ART. 798. The insured shall also have a right to make the abandonment after one year has elapsed in ordinary voyages, and two in long ones, without receiving news of the vessel.

In such case he may demand of the underwriter the indemnity for the value of the amount insured without being obliged to prove the loss; but he must prove the absence of news by means of a certificate of a consul or marine authority of the port of departure, and another from the consuls or marine authorities of the ports of destination of the vessel and of her registry, stating that said vessel has not arrived at said ports during the period fixed.

In order to make use of this action, the period stated in article 804 shall be allowed, short voyages being considered those made to the

[a] No amendment whatsoever has been made in the adaptation of this article to Cuba and Porto Rico, although it should have been made in the same manner as for the Philippines.

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coasts of Europe, and to those of Asia and Africa via the Mediterranean; and with regard to America those undertaken to ports situated between the river of La Plata and St. Lawrence, and to the islands situated between the coasts of Spain and the points designated in this article.

ART. 798. (Cuba and Porto Rico.) The insured shall also have the right to make the abandonment after one year has elapsed in ordinary voyages and two in long ones without receiving news of the vessel.

In such case he may demand of the underwriter the indemnity for the value of the amount insured without being obliged to prove the loss; but he must prove the absence of news by means of a certificate of a consul or marine authority of the port of departure, and another from the consuls or marine authorities of the ports of destination of the vessel, and of her registry, stating that said vessel has not arrived at said ports during the period fixed.

In order to make use of this action, the period stated in article 804 shall be allowed, short voyages being considered those made to the coasts *of the waters of the Antilles, Gulf of Mexico, Yucatan, Guatemala, Honduras, Nicaragua, and Costa Rica in its eastern portion, the United States, Mexico, Brazil, and other points of the eastern coast of America, without going around Cape Horn; and with regard to Europe and Africa, those which may be undertaken to points situated on the coasts of Spain, Portugal, France, Italy, Austria, England, the Netherlands, Germany, Denmark, Sweden and Norway, Russia, or in points in the Mediterranean and western coast of Africa, and the islands lying between the coasts of eastern America and the points designated in this article.*

ART. 799. If the insurance should have been taken for a limited period, a legal presumption that the loss took place within the period agreed upon shall exist, unless proof is adduced by the underwriter to the effect that the loss took place after his liability had terminated.

ART. 800. The insured, at the time of making the abandonment, must declare all the insurances taken out on the goods abandoned, as well as of the loans on respondentia made on the same, and until this declaration has been made the period within which he is to be reimbursed for the value of the goods shall not begin to be counted.

Should he commit fraud in this declaration, he shall lose all the rights he may have to the insurance, and shall be liable for the loans he may have secured on the goods insured, notwithstanding their loss.

ART. 801. In case of the capture of the vessel, and should the insured not have time to act in concurrence with the underwriter, nor to await instructions from him, he in person, or the captain, in his absence, may redeem the goods insured, informing the underwriter at the first opportunity.

The latter may or may not accept the agreement made by the insured or by the captain, communicating his decision within the twenty-four hours following the notification of the agreement.

Should he accept it, he shall immediately deliver the amount agreed upon as redemption, and the subsequent risks of the voyage shall be for his account, in accordance with the stipulations of the policy. Should he not accept it, he shall pay the insurance, losing all rights to the goods redeemed; and if within the period fixed he does not

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render his decision, it shall be understood that he refuses to accept the agreement.

ART. 802. If by reason of the recapture of the vessel the insured should regain possession of his goods, all the costs and damages caused by the loss shall be considered average, and shall be suffered by the underwriter; and if, by reason of the recapture, the goods insured should pass into the possession of a third person, the insured may make use of the right of abandonment.

ART. 803. After the abandonment has been admitted or declared admissible in a suit, the ownership of the goods abandoned, with the increase or deterioration suffered by the same from the time of abandonment, shall be vested in the underwriter, without being exempted from the payment of the repair of the vessel legally abandoned.

The supreme court, in an opinion of October 31, 1868, declared: That the admission of the abandonment of a vessel, or a legal declaration that the abandonment has taken place, transfers to the underwriter the goods abandoned in their actual state, with their increase of deterioration. A real delivery of said goods shall not be necessary, but only the transfer of the corresponding values and rights when the former could not be kept or should have been lost.

ART. 804. Abandonment shall not be admissible—

1. If the loss should have taken place before the beginning of the voyage.

2. If the abandonment is made in a partial or conditional manner, without including therein all the goods insured.

3. If the intention of abandonment is not brought to the notice of the underwriters within the four months following the day on which the insured may have had knowledge of the loss, and if the abandonment is not effected within ten months counted in the same manner, with regard to accidents occurring in the ports of Europe, in those of Asia and Africa, in the Mediterranean, and in those of America from the La Plata to the St. Lawrence rivers, and within eighteen months in other ports.

4. If it does not take place through the owner himself, or by a person specially authorized by him, or by the one authorized to take out the insurance.

In an opinion of October 31, 1868, the supreme court established with regard to number 2 of this article: That the underwriters acquire possession of the goods insured by virtue of their formal abandonment, which must be total and not partial, provided it was possible to preserve them.

ART. 804. (Cuba and Porto Rico.) Abandonment shall not be admissible—

1. If the loss should have occurred before the beginning of the voyage.

2. If the abandonment is made in a partial or conditional manner without including therein all the goods insured.

3. If the intention of abandonment is not brought to the notice of the underwriters within the four months following the day on which the insured may have had knowledge of the loss, and if the abandonment is not effected within ten months, counted in the same manner with regard to accidents occurring in the *West Indian waters, Gulf of Mexico, and Eastern America, without going round Cape Horn, and in those of Europe, west coast of Africa, and the intermediate islands mentioned in article 798*, and within eighteen months in other ports.

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4. If it does not take place through the owner himself, or by a person specially authorized by him, or by the one authorized to take out the insurance.

ART. 805. In case of abandonment the underwriter shall be obliged to pay the amount of the insurance within the period fixed in the policy, and should no period have been stated therein, within sixty days from the admission of the abandonment, or from the date of the declaration mentioned in Article 803.

TITLE IV.—RISKS, DAMAGES, AND ACCIDENTS OF MARITIME COMMERCE.

SECTION FIRST.—*Averages.*

ART. 806. For the purposes of this code the following shall be considered averages:

1. All extraordinary or accidental expenses which may be incurred during the navigation for the preservation of the vessel or cargo, or both.

2. All damages or deterioration the vessel may suffer from the time she puts to sea from the port of departure until she casts anchor in the port of destination, and those suffered by the merchandise from the time it is loaded in the port of shipment until it is unloaded in the port of consignment.

ART. 807. The petty and ordinary expenses of navigation, such as pilotage of coasts and ports, lighterage and towage, anchorage dues, inspection, health, quarantine, lazaretto, and other so-called port expenses, costs of barges, and unloading, until the merchandise is placed on the wharf, and any other expenses common to navigation shall be considered ordinary expenses to be defrayed by the shipowner, unless there is a special agreement to the contrary.

ART. 808. Averages shall be:

1. Simple or particular.

2. General or gross.

ART. 809. Simple or particular averages shall be, as a general rule, all the expenses and damages caused to the vessel or to her cargo which have not redounded to the benefit and common profit of all the persons interested in the vessel and her cargo, and especially the following:

1. The damages suffered by the cargo from the time of its embarkation until it is unloaded, either on account of the nature of the goods or by reason of an accident at sea or force majeure, and the expenses incurred to avoid and repair the same.

2. The damages suffered by the vessel in her hull, rigging, arms, and equipment, for the same causes and reasons, from the time she put to sea from the port of departure until she anchored in the port of destination and the expenses arising therefrom.

3. The damages suffered by the merchandise loaded on deck, except in coast navigation, if the marine ordinances allow it.

4. The wages and maintenance of the crew when the vessel should be detained or embargoed by a legitimate order or force majeure, if the charter should have been for a fixed sum for the voyage.

5. The necessary expenses on arrival at a port, in order to make repairs or secure provisions.

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6. The lowest value of the goods sold by the captain in arrivals under stress for the payment of provisions and in order to save the crew, or to cover any other requirement of the vessel against which the proper amount shall be charged.

7. The victuals and wages of the crew during the time the vessel is in quarantine.

8. The damage suffered by the vessel or cargo by reason of an impact or collision with another, if it were accidental and unavoidable. If the accident should occur through the fault or negligence of the captain, the latter shall be liable for all the damage caused.

9. Any damage suffered by the cargo through the faults, negligence, or barratry of the captain or of the crew, without prejudice to the right of the owner to recover the corresponding indemnity from the captain, the vessel, and the freight.

With regard to the contents of this article, the supreme court declared in an opinion of December 31, 1881: That there must be considered as simple or particular average all damage arising from an unforeseen accident or insuperable force majeure; and in another opinion of January 9, 1883: That when by reason of the lack of skill or negligence of the captain an accident should occur, the liability therefor can not be extended to the shipowner or agent, nor can said damage be classified as an average in the accepted meaning of this word; and said court confirms furthermore, in another opinion of January 5, 1882, the provisions contained in the second paragraph of rule 8 of the article we annotate.

ART. 810. The owner of the goods which gave rise to the expense or suffered the damage shall bear the simple or particular averages.

ART. 811. General or gross averages shall be, as a general rule, all the damages and expenses which are directly caused in order to save the vessel, her cargo, or both at the same time, from a real and known risk, and particularly the following:

1. The goods or cash invested in redemption of the vessel or cargo captured by enemies, privateers, or pirates, and the provisions, wages, and expenses of the vessel detained during the time the arrangement or redemption is taking place.

2. The goods jettisoned to lighten the vessel, even though they belong to the vessel, to the cargo, or to the crew, and the damage suffered through said act by the goods kept.

3. The cables or masts which are cut or rendered useless, the anchors and the chains which are abandoned in order to save the cargo, the vessel, or both.

4. The expenses of transferring or removing a portion of the cargo in order to lighten the vessel and place her in condition to enter a port or roadstead, and the damage resulting therefrom to the goods removed or transferred.

5. The damage suffered by the goods of the cargo through the opening made in the vessel in order to drain her and prevent her sinking.

6. The expenses caused through floating a vessel intentionally stranded for the purpose of saving her.

7. The damage caused to the vessel which it is necessary to break open, scuttle, or smash in order to save the cargo.

8. The expenses of curing and taking care of members of the crew who may have been wounded or crippled in defending or saving the vessel.

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9. The pay of any member of the crew detained as hostage by enemies, privateers, or pirates, and the necessary expenses which he may incur in his imprisonment, until he is returned to the vessel or to his domicile, should he prefer it.

10. The pay and food of the crew of a vessel chartered by the month during the time it should be embargoed or detained by force majeure or by order of the Government, or in order to repair the damage caused for the common good.

11. The loss suffered in the value of the goods sold at arrivals under stress in order to repair the vessel because of gross average.

12. The expenses of the liquidation of the average.

ART. 812. In order to satisfy the amount of the gross or general averages, all the persons having an interest in the vessel and cargo therein at the time of the occurrence of the average shall contribute.

ART. 813. In order to incur the expenses and cause the damages corresponding to gross average, a previous resolution of the captain, adopted after deliberation with the sailing master and other officers of the vessel, and with a hearing of the persons interested in the cargo who may be present, shall be required.

If the latter should object, and the captain and officers, or a majority, or the captain, if opposed to the majority, should consider certain measures necessary, they may be executed under his liability, without prejudice to the freighters exercising their rights against the captain before the judge or court of competent jurisdiction, if they can prove that he acted with malice, lack of skill, or negligence.

If the persons interested in the cargo, being on the vessel, should not be heard, they shall not contribute to the gross average, which contribution shall be paid by the captain, unless the urgency of the case should be such that the time necessary for previous deliberation was lacking.

ART. 814. The resolution adopted to cause the damages which constitute a general average must necessarily be entered in the log book, stating the motives and reasons therefor, the votes against it, and the reasons for the disagreement should there be any, and the irresistible and urgent causes which moved the captain if he acted of his own accord.

In the first case the minutes shall be signed by all the persons present who could do so before taking action if possible, and if not at the first opportunity; in the second case by the captain and by the officers of the vessel.

In the minutes and after the resolution there shall be stated in detail all the goods cast away, and mention shall be made of the injuries caused to those kept on board. The captain shall be obliged to deliver one copy of these minutes to the maritime judicial authority of the first port he may make within twenty-four hours after his arrival, and to ratify it immediately by an oath.

Articles 2173 and 2174 of the law of civil procedure for the Peninsula, 2134 and 2135 of that for Cuba and Porto Rico, and 2094 and 2095 of that for the Philippines, refer to this article.

The amount of the gross average due the vessel in the last voyage shall have preference over the marine mortgage when the following circumstances are present:

1. That the proceedings have been in accordance with the provisions of the article we annotate and those of article 33 of the said marine mortgage law.

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2. That the expenses incurred and the damages caused correspond to gross average.

3. That the proof of the average was always given before a Spanish judicial authority, if the port of arrival or unloading should be Spanish; and if it were in a foreign country, before the consular authority, and should there not be one, before the local authority. The result shall be entered in the certificate of registry of ownership, which the captain must carry.

4. That the liquidation of the average took place in accordance with the provisions of the code of commerce, the result thereof being entered in the same manner.

If the liquidation should take place in the Spanish port of the domicile of the maker of the loan, the latter shall be cited in order to be present when the average is liquidated; but his right shall be limited in this case to making his protest should the proceedings not have been in accordance to law, in his judgment. Should he not make any protest whatsoever, it shall be understood that he consents to the liquidation of the average and he shall lose all rights to impugn it.

The provisional entry of the proof of the average, as well as the provisional entry of its liquidation, shall have all the effects with regard to preference during the time the vessel does not return to the port of departure, all the provisions contained in article 33 of the marine mortgage law in its third and fourth paragraphs (article 34 of the same) being applicable.

ART. 815. The captain shall supervise the jettison, and shall order the goods cast overboard in the following order:

1. Those which are on deck, beginning with those which embarrass the handling of the vessel or damage her, preferring, if possible, the heaviest ones and those of least utility and value.

2. Those in the hold, always beginning with those of the greatest weight and smallest value, to the amount and number absolutely indispensable.

ART. 816. In order that the goods jettisoned may be included in the gross average and be entitled to indemnity, it shall be necessary in so far as the cargo is concerned that their existence on board be proven by means of the bill of lading; and with regard to those belonging to the vessel, by means of the inventory made up before the departure, in accordance with the first paragraph of article 612.

ART. 817. If in lightening a vessel on account of a storm, in order to facilitate her entry into a port or roadstead, part of her cargo should be transferred to lighters or barges and be lost, the owner of said part shall be entitled to indemnity, and the loss shall be considered as gross average, the amount thereof being distributed between the vessel and cargo in question.

If, on the contrary, the merchandise transferred should be saved and the vessel lost, no liability can be demanded of the salvage.

ART. 818. If, as a necessary measure to extinguish a fire in a port, roadstead, creek, or bay, it should be decided to sink a vessel, this loss shall be considered gross average, to which the vessel saved shall contribute.

SECTION SECOND.—*Arrivals under stress.*

ART. 819. If the captain during the navigation should believe that the vessel can not continue the voyage to the port of destination on account of the lack of provisions, sufficient reasons to fear seizure, privateers or pirates, or by reason of any accident of the sea disabling her to navigate, he shall assemble the officers and shall call the persons interested in the cargo who may be present, and who may attend the meeting without the right to vote; and if, after examin-

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ing the circumstances of the case, the reasons should be considered well founded, it shall be decided to make the nearest and most convenient port, drafting and entering in the log book the proper minutes, which shall be signed by all.

The captain shall have the deciding vote and the persons interested in the cargo may make the objections and protests they may deem proper, which shall be entered in the minutes in order that they may make use thereof in the manner they may consider advisable.

ART. 820. The arrival under stress shall not be considered legal in the following cases:

1. If the lack of provisions should have been caused by reason of not having laid in the provisions necessary for the voyage, according to usage and custom, or if they should have been rendered useless or lost through bad stowage or negligence in their care.

2. If the risk of enemies, privateers, or pirates should not have been well known, manifest, and based on positive and justifiable facts.

3. If the injury to the vessel should have been caused by reason of her not being repaired, rigged, equipped, and arranged in a convenient manner for the voyage, or by reason of some imprudent order of the captain.

4. Whenever malice, negligence, want of foresight, or lack of skill on the part of the captain is the reason for the act causing the damage.

ART. 821. The expenses caused by the arrival under stress shall always be for the account of the shipowner or agent, but the latter shall not be liable for the damage which may be caused the shippers by reason of the arrival under stress, provided the latter is legitimate.

Otherwise, the shipowner or agent and the captain shall be jointly liable.

ART. 822. In order to make repairs to the vessel or because there should be danger of the cargo suffering damage, it should be necessary to unload, the captain must request authorization of the judge or court of competent jurisdiction to lighten the vessel, and do so with the knowledge of the person interested or representative of the cargo, should there be one.

In a foreign port, it shall be the duty of the Spanish consul, where there is one, to give the authorization.

In the first case, the expenses shall be defrayed by the ship agent or owner, and in the second, they shall be for the account of the owners of the merchandise, for whose benefit the act took place.

If the unloading should take place for both reasons, the expenses shall be defrayed in proportion to the value of the vessel and that of the cargo.

Articles 2147 et seq. of the law of civil procedure in force in the Peninsula, 2108 of that for Cuba and Porto Rico, and 2068 et seq. of that for the Philippines are applicable to the article we annotate in so far as the mode of procedure is concerned.

See also articles 683 and 688 of this Code.

ART. 823. The care and preservation of the cargo which has been unloaded shall be in charge of the captain, who shall be responsible for the same, except in cases of force majeure.

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ART. 824. If the entire cargo or part thereof should appear to be damaged, or there should be imminent danger of its being damaged, the captain may request of the judge or court of competent jurisdiction or the consul, in a proper case, the sale of all or of part of the former, and the person taking cognizance of the matter shall authorize it after an examination and declaration of experts, advertisements, and other formalities required by the case and an entry in the book, in accordance with the provisions of article 624.

The captain shall, in a proper case, justify the legality of the procedure, under the penalty of answering to the shipper for the price the merchandise would have brought if it should have arrived at the port of its destination in good condition.

Rules 1 and 3 of article 2161 of the law of civil procedure for the Peninsula, 2122 of that amended for Cuba and Porto Rico, and 2082 of that for the Philippines are applicable to the contents of this article.

ART. 825. The captain shall answer for the damages caused by his delay, if, the reason for the arrival under stress discontinuing, he should not continue the voyage.

If the reason for said arrival should have been the fear of enemies, privateers, or pirates, before sailing, a discussion and resolution of a meeting of the officers of the vessel and persons interested in the cargo who may be present shall take place, in accordance with the provisions contained in article 819.

SECTION THIRD.—*Collisions.*

ART. 826. If a vessel should collide with another through the fault, negligence, or lack of skill of the captain, sailing master, or any other member of the complement, the owner of the vessel at fault shall indemnify the loss and damage suffered, after an expert appraisal.

ART. 827. If both vessels may be blamed for the collision, each one shall be liable for his own damages, and both shall be jointly responsible for the loss and damage suffered by their cargoes.

ART. 828. The provisions of the foregoing article are applicable to the case in which it can not be decided which of the two vessels was the cause of the collision.

ART. 829. In the cases above mentioned the civil action of the owner against the person liable for the damage is reserved, as well as the criminal liabilities which may be proper.

ART. 830. If a vessel should collide with another by reason of an accident or through force majeure, each vessel and her cargo shall be liable for their own damage.

ART. 831. If a vessel should be forced to collide with another one through a third vessel, the owner of the third vessel shall indemnify for the loss and damage caused, the captain thereof being civilly liable to said owner.

ART. 832. If, by reason of a storm or other force majeure, a vessel which is properly anchored and moored should collide with those in her immediate vicinity, causing them damage, the damage occasioned shall be looked upon as particular average to the vessel run into.

ART. 833. A vessel shall be considered as lost which, upon being run into sinks immediately, and also any vessel which is obliged to

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make a port to repair the damages caused by the collision should be lost during the voyage, or should be obliged to be stranded in order to be saved.

ART. 834. If the vessels colliding should have pilots on board discharging their duties at the time of the collision, their presence shall not exempt the captain from the liabilities they incur; but the latter shall have the right to be indemnified by the pilots without prejudice to the criminal liability the latter may incur.

See the royal order of March 11, 1886, which regulates the pilotage service and entrance into the Association of Pilots.

ART. 835. The action for the recovery of loss and damage arising from collisions can not be admitted if a sworn statement or declaration is not presented within twenty-four hours to the competent authority of the point where the collision took place, or that of the first port of arrival of the vessel, if in Spain, and to the consul of Spain if it should have occurred in a foreign country.

The fundamental reason for this article is that of preventing fictitious collisions and improper indemnities, but never to interfere with the right of the person injured by reason of an obvious act, provided the latter is made to appear in the manner prescribed in the article we annotate. (Opinion of October 13, 1890.—*Gacetas* of October 30 and November 6.)

ART. 836. In so far as the damages caused to persons or to the cargo are concerned, the absence of a sworn statement can not prejudice the persons interested who were not on board or were not in a condition to make known their wishes.

ART. 837. The civil liability contracted by the shipowners in the cases prescribed in this section, shall be understood as limited to the value of the vessel with all her equipment and all the freight money earned during the voyage.

ART. 838. When the value of the vessel and her equipment should not be sufficient to cover all the liabilities, the indemnity due by reason of the death or injury of persons shall have preference.

ART. 839. If the collision should occur between Spanish vessels in foreign waters, or if it should take place in open waters, and the vessels should make a foreign port, the Spanish consul in said port shall hold a preliminary investigation of the accident, forwarding the proceedings to the captain-general of the nearest department for continuation and conclusion.

SECTION FOURTH.—*Shipwrecks.*

ART. 840. The losses and damages suffered by a vessel and her cargo by reason of shipwreck or stranding shall be individually for the account of the owners, the part of the wreck which may be saved belonging to them in the same proportion.

ART. 841. If the wreck or stranding should arise through the malice, negligence, or lack of skill of the captain, or because the vessel put to sea insufficiently repaired and supplied, the owner or the freighters may demand indemnity of the captain for the damages caused to the vessel or cargo by the accident, in accordance with the provisions contained in articles 610, 612, 614, and 621.

ART. 842. The goods saved from the wreck shall be specially liable for the payment of the expenses of the respective salvage, and the

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amount thereof must be paid by the owners of the former before they are delivered to them, and with preference to any other obligation, if the merchandise should be sold.

In so far as the proceedings to be observed for the alienation of goods saved from a wreck are concerned, see articles 2161 et seq. of the law of civil procedure for the Peninsula, 2122 of that amended for Cuba and Porto Rico, and 2082 of that for the Philippines.

ART. 843. If several vessels navigate in consort, and any of them should be wrecked, the cargo saved shall be distributed among the rest in the proportion to the amount each one can receive.

If any captain should refuse, without sufficient cause, to receive what may correspond to him, the captain of the wrecked vessel shall enter a complaint against him before two sea officials to recover loss and damages resulting therefrom, ratifying the complaint within twenty-four hours after arrival at the first port, and including it in the proceedings he must institute in accordance with the provisions contained in article 612.

Should it not be possible to transfer to the other vessels the entire cargo of the one wrecked, the goods of the highest value and smallest volume shall be saved first, the designation thereof being made by the captain, in concurrence with the officers of his vessel.

ART. 844. A captain who may have taken on board the goods saved from the wreck shall continue his course to the port of destination, and on arrival shall deposit the same, with judicial intervention, at the disposal of their legitimate owners.

In case of changing his course, should he be able to unload them at the port to which they were consigned, the captain may make said port if the shippers or supercargoes present consent thereto, as well as the officers and passengers of the vessel; but he can not do so, even with said consent, in time of war or when the port is difficult to make and dangerous.

All the expenses of this arrival shall be defrayed by the owners of the cargo, as well as the payment of the freights, which, taking into consideration the circumstances of the case, are fixed by agreement or by a judicial decision.

See articles 2119 et seq. of the Law of Civil Procedure for the Peninsula, 2080 of that in force in Cuba and Porto Rico, and 2040 of that for the Philippines.

ART. 845. If there should not be on the vessel any person interested in the cargo to pay the expenses and freights corresponding to the salvage, the judge or court of competent jurisdiction may order the sale of the part necessary to cover the same. This shall also be done when its preservation is dangerous, or when in the period of one year it should not have been possible to ascertain who are its legitimate owners.

In both cases the proceedings regarding publicity and formalities prescribed in article 579 shall be observed, and the net proceeds of the sale shall be deposited in a safe place, in the judgment of the judge or court, in order to be turned over to the legitimate owners thereof.

See the article referred to and article 2621 of the Law of Civil Procedure for the Peninsula, 2122 of that amended for Cuba and Porto Rico, and 2082 of that for the Philippines.

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TITLE V.—PROOF AND LIQUIDATION OF AVERAGES.

SECTION FIRST.—*Provisions common to all kinds of averages.*

ART. 846. The persons interested in the proof and liquidation of averages may mutually agree and bind themselves at any time with regard to the liability, liquidation, and payment thereof.

In the absence of agreements, the following rules shall be observed:

1. The proof of the average shall take place in the port where the repairs are made, should any be necessary, or in the port of unloading.

2. The liquidation shall take place in the port of unloading should it be a Spanish port.

3. Should the average have occurred outside of the waters under the jurisdiction of Spain[a] or the cargo should have been sold in a foreign port by reason of an arrival under stress, the liquidations shall be made in the port of arrival.

4. If the average should have occurred near the port of destination, so that said port can be made, the proceedings treated of in rules 1 and 2 shall be held there.

With regard to the provisions contained in the first rule of this article, there was stated in an opinion of June 30, 1874, that by "port of unloading" is understood the port for which the vessel is bound as the termination of her voyage, where said voyage ends, and where she completes unloading, even though the vessel should carry freight for different ports in transit.

See article 869 of this code and articles 2131 et seq. of the law of civil procedure.

ART. 846. (Cuba, Porto Rico, and the Philippines.) See the note to the text of this article for the Peninsula.

ART. 847. In case of making the liquidation of the averages privately by virtue of agreement, as well as when a judicial authority takes part therein at the request of any of the parties interested who do not agree thereto, all of them shall be cited and heard, should they not have renounced this right.

Should they not be present or not have a legitimate representative, the liquidation shall be made by the consul in a foreign port, and where there is none, by the judge or court of competent jurisdiction, according to the laws of the country, and for the account of the proper person.

When the representative is a person well known in the place where the liquidation takes place, his intervention shall be admitted and produce legal effects, even though he be authorized only by a letter of the shipowner, freighter, or underwriter.

ART. 848. Claims for averages shall not be admitted if they do not exceed 5 per cent of the interest which the claimant may have in the vessel or cargo if it is gross average, and 1 per cent of the goods averaged if particular average, deducting in both cases the expenses of appraisal, unless there is an agreement to the contrary.

ART. 849. The damages, averages, loans on bottomry and respondentia, and their premiums, and any other losses, shall not earn interest by reason of delay until the period of three days has elapsed, to be counted from the day on which the liquidation may have been con-

[a] In the same article amended for the Philippines the word *Spain* is substituted by *the Philippines*. In this case it should also be substituted by *Cuba* or *Porto Rico*.

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cluded and communicated to the persons interested in the vessel, in the cargo, or in both at the same time.

ART. 850. If by reason of one or more accidents of the sea particular and gross averages of the vessel or the cargo, or of both, should take place on the same voyage, the expenses and damages corresponding to each one shall be determined separately in the port where the repairs are made or where the cargo is discharged, or sold, or the merchandise is benefited.

For this purpose the captains shall be obliged to demand of the expert appraisers and of the artisans making the repairs, as well as of those appraising and taking part in the unloading, repair, sale, or the benefiting of the merchandise, that they separate and detail exactly in their appraisements or estimates and accounts all the expenses and damages belonging to each average, and in those of each average those corresponding to the vessel and to the cargo, stating also separately whether there are or not any damages proceeding from the nature of the goods, and not by reason of a sea accident; and in case there should be expenses common to the different averages and to the vessel and her cargo, there must be calculated the amount corresponding to each and stated distinctly.

SECTION SECOND.—*Liquidation of gross averages.*

ART. 851. At the instance of the captain, the adjustment, liquidation, and distribution of gross averages shall be held privately, with the consent of all the parties in interest.

For this purpose, within forty-eight hours following the arrival of the vessel at the port, the captain shall call all the persons interested, in order that they may decide as to whether the liquidation of the gross average is to be made by experts and liquidators appointed by themselves, in which case this shall be done should the persons interested agree.

Should an agreement not be possible, the captain shall apply to the judge or court of competent jurisdiction, who shall be the one of the port where these proceedings are to be held in accordance with the provisions of this code, or to the consul of Spain, should there be one, and otherwise to the local authority when they are to be held in a foreign port.

When the judicial liquidation mentioned in this article is proper, the provisions of articles 2131 et seq. of the law of civil procedure for the Peninsula, 2096 of that for Cuba and Porto Rico, and 2052 of that for the Philippines, shall be observed.

ART. 852. If the captain should not comply with the provisions contained in the foregoing article, the shipowner or agent or the freighters shall demand the liquidation, without prejudice to the action they may bring in order to recover indemnity.

ART. 853. After the experts have been appointed by the persons interested, or by the judge or court, before the acceptance, an examination of the vessel and of the repairs required shall be made, as well as an estimate of their cost, separating these losses and damages from those arising from the character of the goods.

The experts shall also declare whether the repairs can be made immediately, or whether it is necessary to unload the vessel to examine and repair her.

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With regard to the merchandise, if the average should be visible to the eye, the examination thereof must be made before it is delivered. Should it not be seen at the time of unloading, said examination may be held after the delivery, provided it is done in forty-eight hours from the unloading and without prejudice to the other proofs which the experts may deem necessary.

The provisions contained in articles 2134 et seq. of the law of civil procedure are applicable to the article we annotate, with the limitations contained in article 869.

ART. 854. The appraisement of the goods which are to contribute to the gross average, and that of those which constitute the average, shall conform to the following rules:

1. The merchandise saved which is to contribute to the payment of the gross average shall be valued at the current price thereof at the port of unloading, deducting the freights, customs duties, and charges for unloading, as may appear from a material inspection of the same, not taking into consideration the bills of lading, unless there is an agreement to the contrary.

2. If the liquidation is to take place in the port of sailing, the value of the merchandise loaded shall be fixed by the purchase price, including the expenses until they are put on board, excluding the insurance premium.

3. If the merchandise should be damaged, it shall be appraised at its true value.

4. If the voyage should be interrupted, the merchandise having been sold in a foreign port and the average can not be estimated, there shall be taken as the contributing capital the value of the merchandise in the port of arrival, or the net proceeds obtained at the sale thereof.

5. Merchandise lost, which should constitute the gross average, shall be appraised at the value merchandise of its kind may have in the port of unloading, provided its kind and quality appears in the bill of lading; and should this not be the case, the invoices of the purchase issued in the port of shipment shall be taken as a basis, adding to its value the expenses and freights subsequently arising.

6. The masts cut down, the sails, cables, and other equipment of the vessel rendered useless for the purpose of saving her, shall be appraised at the current value, deducting one-third by reason of the difference between new and old.

This deduction shall not be made in regard to anchors and chains.

7. The vessel shall be appraised at her real value in her condition at the time.

8. The freights shall represent 50 per cent by way of contributing capital.

ART. 855. The merchandise loaded on the upper deck of the vessel shall contribute to the gross average should it be saved; but there shall be no right to indemnity if it should be lost by reason of being jettisoned for the general safety, except when the marine ordinances allow its shipment in this manner in coast navigation.

The same shall take place with that which is on board and is not included in the bills of lading or inventories, according to the cases.

In any case the shipowner and the captain shall be liable to the freighters for the loss of the jettison, if the stowage on the upper deck took place without the consent of the latter.

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ART. 856. Provisions and munitions of war which the vessel may have on board shall not contribute to the gross average, nor the clothing used by the captain, officers, and crew.

There shall also be excepted the clothing used by the freighters, supercargoes, and passengers who may be on board at the time of the jettison.

The goods jettisoned shall contribute to the payment of the gross averages which may occur to those saved in a different and subsequent risk.

ART. 857. After the appraisement of the goods saved has been concluded by the experts, as well as that of the goods lost which constitute the gross average, and after the repairs have been made to the vessel, should any have to be made, and in such case after the approval of the accounts of the same by the persons interested or by the judge or court, the entire record shall be turned over to the liquidator appointed, in order that he may proceed with the distribution of the average.

The provisions of articles 2142 and 2143 of the law of civil procedure are applicable to the contents of this article.

ART. 858. In order to effect the liquidation the liquidator shall examine the sworn statement of the captain, comparing it, if necessary, with the log book and all the contracts which may have been made between the persons interested in the average, the appraisements, expert examinations, and accounts of repairs made. If, as a result of this examination, he should find any defect in this procedure which might damage the rights of the persons interested or affect the liability of the captain, he shall call attention thereto in order that it be corrected, if possible, and otherwise he shall include it in the preliminaries of the liquidation.

Immedately thereafter he shall proceed with the distribution of the amount of the average, for which purpose he shall fix—

1. The contributing capital, which he shall determine by the value of the cargo, in accordance with the rules established in article 854.

2. That of the vessel in her actual condition, according to a statement of experts.

3. The 50 per cent of the amount of the freight, reserving the remaining 50 per cent for pay and sustenance of the crew.

After the amount of the gross average has been determined in accordance with the provisions of this code, it shall be distributed pro rata among the goods which are to cover the same.

ART. 859. The underwriters of the vessel, of the freight, and of the cargo shall be obliged to pay for the indemnity of the gross average in so far as is required of each one of these objects respectively.

ART. 860. If, notwithstanding the jettison of the merchandise, breakage of masts, ropes, and equipment, the vessel should be lost running said risk, no contribution whatsoever by reason of gross average shall be proper.

The owners of the goods saved shall not be liable for the indemnity of those jettisoned, lost, or damaged.

ART. 861. If, after the vessel having been saved from the risk which gave rise to the jettison, she should be lost through another accident taking place during the voyage, the goods saved and existing from the first risk shall continue liable to contribution by reason of

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the gross average according to their value in their condition at the time, deducting the expenses incurred in saving them.

ART. 862. If, notwithstanding the saving of the vessel and of her cargo in consequence of the cutting down of masts or of any other damage deliberately done to the vessel for said purpose, the merchandise should subsequently be lost or stolen, the captain can not demand of the shippers or consignees that they contribute to indemnity for the average unless the loss should occur by an act of the owner or consignee.

ART. 863. If the owner of the jettisoned goods should recover them after having received the indemnity for gross average, he shall be obliged to return to the captain and to the other persons interested in the cargo the amount he may have received, less the damage caused by the jettison and the expenses incurred in their recovery.

In the latter case, the amount returned shall be distributed between the vessel and the persons interested in the cargo in the same proportion in which they contributed to the payment of the average.

ART. 864. If the owner of the goods jettisoned should recover them without having demanded any indemnity he shall not be obliged to contribute to the payment of the gross average which may have been suffered by the rest of the cargo after the jettison.

ART. 865. The distribution of the gross average shall not be final until it has been agreed to, or in the absence thereof, until it has been approved by the judge or court after an examination of the liquidation and a hearing of the persons interested who may be present, or of their representatives.

ART. 866. After the liquidation has been approved it shall be the duty of the captain to collect the amount of the distribution, and he shall be liable to the owners of the goods averaged for the losses they may suffer through his delay or negligence.

See articles 2144 and 2145 of the law of civil procedure.

ART. 867. If the contributors should not pay the amount of the assessment within the third day after having been requested to do so, the goods saved shall be attached, at the request of the captain, and shall be sold to cover the payment.

ART. 868. If the persons interested in receiving the goods saved should not give security sufficient to answer for the amount corresponding to the gross average, the captain may defer the delivery thereof until payment has been made.

SECTION THIRD.—*Liquidation of ordinary averages.*

ART. 869. The experts which the judge or court or the persons interested may appoint, according to the cases, shall proceed with the appraisement and examination of the averages in the manner prescribed in article 853 and in article 854, rules 2 to 7, in so far as they

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Book Fourth.—SUSPENSION OF PAYMENTS, BANKRUPTCIES, AND PRESCRIPTIONS.

TITLE I.—SUSPENSION OF PAYMENTS AND BANKRUPTCIES IN GENERAL.[a]

SECTION FIRST.[b]—*Suspension of payments and its effects.*[c]

ART. 870. A merchant who, possessing sufficient property to cover all his debts, foresees the impossibility of meeting them when they respectively fall due, may suspend payments, which shall be declared by the judge of first instance of his domicile in view of his declaration.[d]

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[a] See General Orders No. 224, Headquarters Department Porto Rico, Dec. 21, 1899.

The code of commerce is the general law for the entire Monarchy and the special prescriptions of the Catalonian law treating of bankruptcies do not conflict with its application. (Opinion of December 27, 1888.)

[b] The amendment introduced in the four articles of which this section is composed, by the law of June 10, 1897, was extended without making any changes whatsoever in the drafting thereof, to the islands of Cuba, Porto Rico, and the Philippines, by a royal decree of the Colonial Department of June 25, 1897. (*Gaceta* of the 27th.)

[c] The four articles which compose this section have been amended, some radically, just as we insert them, by the law of June 10, 1897. Although the amendment is limited to the suspension of payments, it is not thereby rendered less worthy of applause, nor do those who procured it with such laudable perseverance deserve less gratitude.

The reasons which gave rise thereto, and which urgently demanded it, are included in the preamble of the project of law, submitted to the Cortes by the Secretary of Grace and Justice on April 25, 1892, and more laconically, although with perfect lucidity, in the report which, on May 21, 1894, was submitted by the commission appointed by Congress to make a report on the law relating to the suspension of payments and bankruptcies, submitted by the well-known jurist and deputy, Sr. Lastres, and which is as follows:

"To Congress: Few amendments appear to be demanded with such unanimous urgency as that of articles 870 to 873 of the code of commerce, which permit a measure, which the legislator intended for very different purposes, to be converted into proceedings for the discharge and reduction of credits. There is no doubt, although it may be denied by the rigor of some legislations, that before bankruptcy a merchant may be in an intermediate condition, in which, without enjoying his full credit, he is not in a situation to suspend the payment of his obligations in full. Acknowledging this transitory situation, articles 870 to 873 of the code of commerce were drafted originally, because neither the project of 1882 nor the report of Congress of the same date authorized anything but an extension, a postponement, for the full payment of the debts.

"The parliamentary initiative modified the text above mentioned; and what should have been only a transitory remedy to secure an extension was converted into a measure to reduce credits, the abuse thereof by merchants of bad faith reaching such a point that it was a frequent occurrence that article 870 of the code was made use of to offer 10 per cent or less for the debt, in installments, which sometimes covered ten years. It is sufficient to state this result to justify the very sufficient reasons adduced by honorable commerce to abolish a law which protects such an enormity, and that the text of 1882 be readopted, which is in accordance with the nature of the subject, and even the grammatical sense of the phrases contained therein, as an introduction to the section of the code of commerce we treat of."

[d] The previous text of this article was as follows: "Art. 870. A person who possessing sufficient property to cover all his debts, should foresee the impossibility of meeting them when they fall due, and a person not having sufficient funds to fully pay them, may suspend payments, which shall be declared by the judge or court in view of his declaration."

From the large amount of jurisprudence existing with relation to this section, we select and insert at the end of each article what we consider pertinent and

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ART. 871. A merchant who possesses sufficient property to cover all his liabilities may also suspend payments within forty-eight hours following the falling due of an obligation which he may not have met.[a]

ART. 872. A merchant who desires to suspend payments must attach to his petition the balance of his assets and liabilities and the proposal of the extension he requests of his creditors, which can not exceed three years. If in any manner whatsoever a discharge or reduction of the credits is desired, the judge shall refuse to hear the petition for suspension of payments.[b]

ART. 873. The proceedings for the suspension of payments shall conform to the provisions indicated in the special law. If the extension should be refused by the board, the proceedings shall be concluded.

The provisions of articles 870 to 873 shall be applicable to the suspension of payments of associations and enterprises not included in article 930.

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applicable, even after the amendment, because of the general provisions of the old articles being preserved in those amended:

After the suspension of payments has been judicially declared in accordance with the provisions of this article, it is not possible in law to request, much less to obtain, a declaration of bankruptcy, except in the case of the proceedings being closed for any of the reasons mentioned in article 873 of this code. (Opinion of October 4, 1889.—*Gaceta* of the 21st.)

For the effects of cassation, a decision refusing the declaration of suspension of payments is not definite, the merchant reserving the right of declaring himself a bankrupt. (Opinion of January 30, 1889.)

In an opinion of January 4, 1891 (*Gaceta* of February 28), it was also established that, in accordance with the article we annotte, the condition of suspension of payments which a merchant may establish constitutes a right incompatible with a bankruptcy at the same time.

The declaration of the bankruptcy of an estate must not be refused when the latter suspends the payment of current obligations which have fallen due if the commerce in which the principal was engaged has been continued by the representatives of the inheritance. (Opinion of June 3, 1891. *Gacetas* of August 10 and 12.)

[a] The previous text of this article was as follows:

"ART. 871. A merchant may also suspend payments within forty-eight hours following the falling due of an obligation which he may not have met.

"After the forty-eight hours mentioned in the foregoing paragraph have elapsed, without the privilege mentioned in the same having been made use of, he must the following day declare himself a bankrupt before the judge or court of his domicile."

[b] The previous text of this article was as follows:

"ART. 872. After the declaration of suspension of payments has been made, the merchant must present to his creditors, within a period of ten days, a proposition of settlement, the deliberation, vote, and all that concerns the same being subject to the provisions contained in the fourth section of this title, with the exception of what is stated therein with regard to the degree of the bankruptcy, which shall not be necessary."

The legal status established with the suspension of payments can not be changed on the petition of the creditors for the purpose of declaring a bankruptcy, except for the reason stated in the last paragraph of article 876 of the code of commerce, which is the nonpresentation of the proposition of settlement within the period fixed in article 872 of the same, and as it is not proven that the latter was not presented, therefore the contrary is deduced from the existence of the company in said condition of suspension of payments and from what has been stated by the parties, the infraction alleged in the eighth reason of the remedy in the application of the said article 876 of the said code in substituting the declaration of bankruptcy, and, therefore, the judgment ordering this must be annulled. (Opinion of July 14, 1894. *Gaceta* of November 11.)

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In order that said associations not included in article 930 may declare a suspension of payments, an agreement of the members shall be indispensable, adopted at a general meeting, specially called for the purpose, within the period fixed in article 871. For the calling of the meeting the shortest possible periods shall be fixed which are allowed by the association by-laws or articles.[a]

Until a decision is adopted with regard to the adjustment a declaration of bankruptcy can not be demanded, because the proceedings for the suspension of payments create a preliminary condition, and until decided, said declaration can not be requested. (Opinion of August 25, 1887.)

After the citation of the creditors has been resolved upon and carried on in the terms requested by the debtor, the latter can not allege a nullity nor infraction of articles 873, 901, 902, and 903 when the chamber conforms its decision to the provisions contained in the first of the latter, and therefore a proposition of settlement can not be discussed, nor can the latter be impugned, but the proceedings may be concluded. (Opinion of May 7, 1899.)

With regard to the proceedings in the suspension of payments, the articles embraced in the first section, title 12, book 2, of the law of civil procedure are in force, without thereby conflicting with those included in section first, title 1, book 4, of the code of commerce; because the articles of the commercial code, in this part, do nothing more than to determine the right and conditions to exercise the same, while the laws of procedure establish the formalities to make them effective. By virtue thereof articles 1145 and 1146 of the law of procedure are violated by an opinion which does not declare the nullity of the measures which declared an agreement for a certain association compulsory, when it appears that, although the latter was notified at the request of the plaintiff of the approval of the settlement, neither did said plaintiff request it within three days following the meeting of the board at which the settlement was to be accepted, nor less was there entered in the proceedings, under pain of nullity, the statement that the settlement was obligatory and that he could not object thereto if in the proceedings or within the period fixed he should not protest against said decision. If an association having a residence abroad should be in question, and which was not present at the meeting where the settlement was approved, the resolution adopted at the same can not affect it, and should this not be understood, article 1148 of the said law of procedure would be violated.

SECTION SECOND.—*General provisions regarding bankruptcies.*

ART. 874. A merchant shall be considered in a state of bankruptcy who does not meet his current obligations.

A decision rendered in judgments of suspension of payments to the effect that "for the present" a declaration of bankruptcy is not proper, does not have the character of a definite judgment for the purposes of cassation. (Ruling of December 10, 1894. *Gaceta* of March 2, 1895.)

Article 874 of the code of commerce is applicable and refers only to the condition of bankruptcy a merchant is considered to be in who does not meet his obligations, but not when a suspension of payments is in question or the approval of the draft of an agreement requested and obtained by the debtor. (Opinion of June 28, 1894. *Gaceta* of November 9.)

ART. 875. The declaration of bankruptcy shall be proper—

1. When the bankrupt requests it in person.
2. On a well-based request of a legitimate creditor.

For the declaration of bankruptcy, in the case of the first number, the provisions of article 1324 of the law of civil procedure must be borne in mind.

See also the article of the repealed code of commerce, referring to this procedure, and the third appendix at the end of this code.

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[a] The previous text of this article was as follows:

"ART. 873. If the proposition of settlement should be refused, or a sufficient number of voters should not assemble to approve the same, the proceedings shall be closed, and all the persons interested shall be at liberty to make use of their respective rights."

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ART. 876. For the declaration of bankruptcy at the instance of the creditor it shall be necessary that the request be based on a title by virtue of which an execution or writ of attachment was issued, and that the results of the attachment should not be sufficient to cover the payment.

The declaration of bankruptcy at the instance of creditors shall also be proper, who, although they have not obtained a writ of attachment, prove their credits and that the merchant has generally defaulted in the payment of his current obligations, or that he has not presented his proposition of settlement in the case of suspension of payments within the period fixed in article 872.

See the third appendix following this code.

Articles 1325, 1333, and 1334 of the law of civil procedure are applicable to the provisions of the foregoing article.

The plural *creditors* used in the second paragraph of the article we annotate does not mean that the declaration of bankruptcy must be requested by two or more creditors, but that any one of the creditors proving his credit may do so. (Opinion of November 5, 1890.)

ART. 877. In case of the flight or concealment of a merchant, together with the closing of his offices, warehouses, or dependencies, without having left any person to manage his business for him and to meet his obligations, for the declaration of bankruptcy at the instance of a creditor it shall be sufficient that the latter proves his title and proves said facts by means of a statement which he may present to the judge or court.

The judges shall furthermore officially, in case of the well-known flight or of which they have authentic information, take charge of the establishments of the said fugitive, and shall prescribe the measures required for their preservation until the creditors make use of their right with regard to the declaration of bankruptcy.

ART. 878. After the bankruptcy has been declared the bankrupt shall be disqualified to administer his property.

All his acts of ownership and administration subsequent to the period to which the effects of the bankruptcy retroact shall be null.

ART. 879. The amounts which the bankrupt may have paid in cash, securities, or certificates of credit in the fifteen days preceding the declaration of bankruptcy by reason of direct debts and obligations, which fell due after the latter, shall be returned to the assets by the persons who received the same.

The discount of his private property made by the merchant within the same period shall be considered as a payment in advance.

With regard to the procedure see articles 1371 to 1377 of the law of civil procedure and those of the repealed code of commerce, which refer hereto and which have no equivalents in this code.

See also articles 457, 510, 908, and 909 of this code.

ART. 880. Contracts celebrated by the bankrupt within the thirty days preceding his bankruptcy shall be considered fraudulent and void with regard to his creditors, if they are of the following kinds:

1. Transfers of real estate made without consideration.
2. Constitutions of dowries made of his private property to his daughters.
3. Concessions and transfers of real estate in payment of debts not due at the time of the declaration of bankruptcy.

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4. Conventional mortgages on obligations of a prior date which do not have this quality, or for loans of money or merchandise the delivery of which had not taken place at the time of contracting the obligation before a notary and the witnesses taking part therein.

5. Gifts *inter vivos*, which have not the well-known character of remunerations, which have taken place after the balance preceding the bankruptcy, if it should show liabilities greater than the assets of the bankrupt.

A contract can not be considered gratuitous nor included in number 1 of this article when it appears that in making a sale the thing and price is letermined upon, taking into consideration the existing encumbrances and accepting a sum therefor. (Opinion of November 24, 1890.)

ART. 881. The following may be annulled at the instance of the creditors by proving that the bankrupt acted with the intention of defrauding them of their rights:

1. The alienation for a valuable consideration of real property made in the month preceding the declaration of the bankruptcy.

2. The creation of dowries, made within the same time, of property of the conjugal partnership in favor of the daughters or any other transfer of said property for no consideration.

3. The creation of dowries or acknowledgment of having received moneys made by a merchant spouse in favor of the other spouse in the six months preceding the bankruptcy, provided they do not consist of real property which was inherited by the latter from his or her ascendants or acquired or possessed previously by the spouse in whose favor the assignment of the dowry or receipt of moneys was made.

4. All acknowledgments of the receipt of money or of instruments as evidence of loans, which, having been made six months before the bankruptcy in a public instrument, are not proven as having taken place by means of a notarial statement; or if, having been made in a private instrument, they should not conform to the entries in the books of the contracting parties.

5. All contracts, obligations, and commercial transactions of the bankrupt which are not prior to the declaration of bankruptcy by ten days at least.

With regard to the contents of the fourth paragraph of the article we annotate, the supreme court established, in an opinion of December 7, 1866, that in order that the acknowledgment of money received as a loan may be annulled, and which appears in a public instrument, six months before the bankruptcy of the debtor, without the certification as to delivery of the notary, it shall be necessary to prove that it was made in order to defraud the creditors.

ART. 882. Any gift or contract made in the two years preceding the bankruptcy may be revoked at the instance of the creditors if it should be proven that any supposition or simulation has been made to defraud the former.

ART. 883. In virtue of the declaration of bankruptcy, the pending debts of the bankrupt shall be considered as falling due on the date of the same.

If the payment should be made before the time fixed in the obligation, it shall be made with the proper discount.

ART. 884. From the date of the declaration of bankruptcy all the debts of the bankrupt shall cease to earn interest, with the exception of the mortgage and pledge credits, in so far as covered by the respective guaranty.

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ART. 885. A merchant who obtains the revocation of the declaration of bankruptcy requested by his creditors may bring an action for loss and damage against the latter, if it took place with manifest malice, falsity, or injustice.

Articles 1326 et seq. of the law of civil procedure in relation with articles 1028 to 1033 of the repealed code of commerce are a complement to this article in so far as the procedure is concerned.

Neither article 885 of the code of commerce nor articles 1308, 1309, and 1310 of the law of civil procedure for the Philippines refuse creditors the right to object to the declaration of bankruptcy, although the former, under the supposition that the debtor has made use thereof, only establishes the liability contracted by the creditors who may have obtained said declaration with manifest malice, falsity, or injustice, and the remaining ones determine the procedure to be observed with regard to the objections made by the said debtor, without treating, in this regard, of the legitimate creditors, to whom the said law of procedure in its article 1152 grants this privilege in meetings of creditors; therefore, as there does not exist any reason whatsoever which justifies such a difference between both universal judgments, and as it is prescribed in article 1301 that in all that is not foreseen and ordered in the code of commerce and in the title with relation to the mode of procedure in bankruptcies the provisions prescribed in the foregoing title for meetings of creditors be observed, which provisions are considered as supplementary, it is obvious that creditors in a judgment of bankruptcy have the same right, provided they make use thereof within the periods established in article 1153. (Opinion of November 8, 1895. *Gacetas* of December 2 and 3.)

SECTION THIRD.—*Kinds of bankruptcies and parties thereto.*

ART. 886. For legal purposes three different kinds of bankruptcies shall be distinguished, viz:

1. Accidental insolvency.
2. Culpable insolvency.
3. Fraudulent insolvency.

ART. 887. An accidental bankruptcy shall be considered that of a merchant who is the victim of misfortunes which, having to be considered accidental in the regular and prudent order of a good commercial administration, reduce his capital to such a point that he can not meet his debts in full or in part.

ART. 888. A culpable bankruptcy shall be considered that of merchants who are embraced in any of the following cases:

1. If the household and personal expenses of the bankrupt should have been excessive and not in proportion with his net profits, taking into consideration the circumstances of his standing and family.
2. If he should have suffered losses at any kind of play which exceed that which a diligent father of a family should risk in this kind of entertainments.
3. If the losses should have occurred by reason of imprudent wagers and involving large amounts, or from sales or purchases or other transactions, the purpose of which should be to delay the bankruptcy.
4. If in the six months preceding the declaration of bankruptcy he should have sold at a loss or for less than their current price goods bought on credit and which were not as yet paid for.
5. If it should appear in the period which has elapsed from the last inventory until the declaration of the bankruptcy that there was a time when the bankrupt owed, by reason of direct obligations, double the amount of the net credit appearing in the inventory.

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The five cases of culpable bankruptcy referred to in this article are punished in article 538 of the penal code for the Peninsula, and in articles 548 of that for Cuba and Porto Rico and 525 of that for the Philippines.

ART. 889. The following shall also be considered culpable bankrupts in law, reserving the exceptions they may propose and prove in order to prove the innocence of the bankruptcy:

1. Those who have not kept their books of accounts in the manner and with all the essential and indispensable requisites prescribed in title 3 of Book I, and those who, even though they keep said books with all these conditions, should have made errors in the same which may have caused losses to a third person.

2. Those who have not made their declaration of bankruptcy in the period and manner prescribed in article 871.

3. Those who, having absented themselves at the time of the declaration of bankruptcy or during the progress of the suit, should not appear in person in the cases in which the law requires it of them, unless there is a legitimate obstacle.

See articles 33 et seq. of this code and the third appendix hereto.

ART. 890. A fraudulent bankruptcy shall be considered the one of merchants who are included in any of the following conditions:

1. Flight with all or a part of their property.

2. The inclusion in the balance, memoranda, books, or other documents relating to their business or transactions, or fictitious property, credits, debts, losses, or expenses.

3. If they have not kept books, or, if they have done so, they include therein, to the prejudice of a third person, entries not made in the proper place and at the proper time.

4. If they erase, blot, or change in any other manner the contents of the books, to the prejudice of a third person.

5. If the result or existence of the assets of their last inventory does not appear from the books, and the cash, securities, personal property, and goods of any kind whatsoever which appear or are proven to have come into the possession of the bankrupt subsequently.

6. If they do not insert in the balance any amount of cash, credits, goods, or other kinds of property or rights.

7. If they have used and applied to their own business funds or goods belonging to another which may have been left with them on deposit for administration or commission.

8. If they negotiate, without authority of the owner, drafts of another's accounts which are in their possession for collection, transmission, or other purpose than negotiation, should they not have forwarded the former the amount thereof.

9. If, having been commissioned to sell some goods or to negotiate credits or commercial securities, they should not have informed the owner thereof for any period of time.

10. If they falsify transfers of whatsoever kind.

11. Execute, sign, consent to, or acknowledge fictitious debts, presuming as such, unless there is proof to the contrary, all those which have no foundation or determined value.

12. If they purchase real estate, goods, or credits, placing them in the name of a third person to the prejudice of their creditors.

13. If they have advanced payments to the prejudice of their creditors.

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14. If they negotiate, after the last balance, drafts drawn by them on other persons in whose hands they have no funds or open credit, or authority to do so.

15. If, the declaration of bankruptcy having been made, they should have collected and applied to their personal use money, cash, or credits from the assets or taken from the latter any of their belongings.

When the flight mentioned in No. 1 of this article should take place, together with the bankruptcy, articles 536 of the penal code for the Peninsula, 547 of that for Cuba and Porto Rico, and 539 of that for the Philippines shall be applicable.

To persons guilty of this kind of bankruptcies, without being fugitives, as mentioned in No. 1, the penalties prescribed in article 537 of the penal code for the Peninsula and its equivalent of those for Cuba, Porto Rico, and the Philippines shall be applicable.

Furthermore, article 539 of the said penal law is applicable to the article we annotate, as well as to the two preceding ones.

ART. 891. The bankruptcy of a merchant, whose true condition can not be seen from his books, shall be considered fraudulent unless there is proof to the contrary.

See articles 898 to 920 of this code.

ART. 892. The bankruptcy of commercial agents shall be considered fraudulent when it is proven that they made some transaction of draft or traffic for their own account in their own name or in that of another, even though the reason for the bankruptcy does not arise from said acts.

If the bankruptcy should have occurred by reason of the agent having constituted himself security for the transactions in which he took part, the bankruptcy shall be considered fraudulent, unless there is proof to the contrary.

ART. 893. Parties to fraudulent bankruptcies shall be considered:

1. Those who assist in the removal of property of the bankrupt.

2. Those who having conspired with the bankrupt to suppose credits against him, or to increase the amount of those they may actually have against securities or property, and who sustain this supposition in the proceedings of examination or classification of the credits, or at any meeting of creditors of the bankruptcy.

3. Those who in order to place themselves in preference to others to the prejudice of other creditors, by consent of the bankrupt, alter the nature or the date of the credit, even though this should be done before the declaration of bankruptcy.

4. Those who deliberately and after the bankrupt suspended payments should assist him in concealing or removing a portion of his property or credits.

5. Those who, being the holders of any property of the bankrupt at the time the declaration of bankruptcy by the judge or court taking cognizance thereof is made known, deliver it to the former and not to the legitimate administrators of the assets, unless, being a nation or province different from that of the domicile of the bankrupt, they prove that in the town of their residence the bankruptcy was unknown.

6. Those who refuse to deliver to the receivers of the bankruptcy the goods belonging to the bankrupt which may be in their possession.

7. Those who after the publication of the bankruptcy should admit indorsements of the bankrupt.

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8. The legitimate creditors who, to the prejudice and in fraud of the assets, should make private or secret settlements with the bankrupt.

9. The agents who take part in a transaction of traffic or drafts which the merchant who has been declared bankrupt makes.

See the third appendix of this code.

The provisions of articles 541 of the penal code in force in the Peninsula, 552 of that for Cuba and Porto Rico, and 532 of that for the Philippines, are applicable to the last eight numbers of this article.

ART. 894. The parties to the bankruptcies shall be condemned, without prejudice to the penalties they may incur in accordance with the criminal laws:

1. To lose any right they may have to the assets of the bankruptcies to which they are declared parties.

2. To return to the said assets the property, rights, and actions with regard to which the declaration of their complicity was rendered, with interest and indemnity for loss and damage.

ART. 895. The classification of the bankruptcy, in order to demand the criminal liability of the debtor, shall always be made in a separate proceeding, which shall be instituted with a hearing of the department of public prosecution, of the receivers and of the bankrupt himself.

The creditors shall have the right to take part in the proceedings and to bring actions against the bankrupt, but they shall do so at their own expense, without any right of action to be reimbursed from the assets for the expenses of the suit or for the costs, no matter what may be the result of their actions.

With regard to the provisions contained in the first paragraph, relating to the fact that the proceedings referring to the criminal liability shall be held with a hearing of the receivers, the provisions of articles 1382 to 1388 of the law of civil procedure, and specially the provisions of article 1387, should be taken into consideration.

ART. 896. In no case, neither at the instance of a party nor officially, shall proceedings with regard to the crimes of culpable or fraudulent bankruptcy be instituted before the judge or court has made the declaration of bankruptcy and that there are grounds to proceed criminally.

See the third appendix of this code.

ART. 897. The classification of an accidental bankruptcy by means of a final judgment shall not be an obstacle to a criminal action when, from the pending suits on settlements, admission of credits, or any other matter, there should appear to be signs of acts punishable in the penal code, which shall be brought to the knowledge of the judge or court of competent jurisdiction. In such cases the department of public prosecution must previously be heard.

SECTION FOURTH.—*Settlements of bankrupts with their creditors.*

ART. 898. At any stage of the proceedings, after the examination of the credits, and after the classification of the bankruptcy has been made, the bankrupt and his creditors may make the settlements they may deem proper.

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Fraudulent bankrupts shall not enjoy this right, nor those who flee during the proceedings in bankruptcy.

See articles 1289 et seq. of the law of civil procedure now in force.

ART. 899. The settlements between the creditors and the bankrupt must be made at a meeting of creditors duly called.

Private adjustments between the bankrupt and any of his creditors shall be void; the creditor who makes them shall lose his right in the bankruptcy, and the bankrupt, through this act alone, shall be classified as culpable, when he does not deserve to be considered as a fraudulent bankrupt.

See articles 888 et seq. of this code.

ART. 900. The creditors specially preferred, the preferred creditors, and the mortgage creditors need not take part in the resolution of the board with regard to the adjustment, and should they not take part therein, they shall not be injured by reason thereof in their respective rights.

If, on the contrary, they should prefer to take part and vote on the settlement proposed, they shall be included in the extensions and discharges which the board may decide upon, without prejudice to the place and degree corresponding to their credit.

See article 1392 of the law of civil procedure.

ART. 901. The draft of the settlement shall be discussed and submitted to vote, the vote of a number of creditors composing one over one-half of those present being sufficient to adopt resolutios, provided their interest in the bankruptcy covers three-fifths of the total liabilities, after having deducted the amount of the credits of the creditors included in the first paragraph of the foregoing article who may have made use of the right granted them therein.

Articles 872, 873, and 901 to 903 of the code of commerce refer to the suspension of payments legally effected, and in no manner whatsoever to that effected outside of the exact conditions of law, to which they have no application at all, and are to be considered still more so when the declaration referred to is granted on the request of the person interested, without a hearing or opposition of his creditors being possible. (Opinion of June 28, 1894. *Gaceta* of November 9.)

See the article cited in the preceding note.

ART. 902. Within the eight days following the holding of the meeting at which the settlement was accepted, the dissenting creditors and those who have not taken part in the meeting may object to the approval of the same.

ART. 903. The only reasons on which the objection to the settlement may be based shall be the following:

1. Errors in the procedure prescribed for the calling, holding, and deliberations of the meeting.

2. Lack of qualifications or representation in one of the voters, if his vote decides the majority in number or amount.

3. Fraudulent understandings between the debtor and one or more creditors, or of the creditors among themselves to vote in favor of the settlement.

4. Fraudulent exaggerations of credits in order to obtain the majority in amount.

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5. Fraudulent error in the general balance of the transactions, of the bankrupt, or in the reports of the receivers, in order to facilitate the admission of the proposals of the debtor.

See in the annotation to article 901 the doctrine of the opinion of June 28, 1894.

ART. 904. After the settlement has been approved, and, with the exception of the provisions contained in article 900, it shall be binding upon the bankrupt and for all the creditors whose credits are of a date prior to the declaration of bankruptcy, should they have been cited in a legal manner, or if, having been notified of the approval of the settlement, they should not have proceeded against the latter in the manner prescribed in the law of civil procedure, even though they are not included in the balance and have not taken part in the proceedings.

The provisions of the law of civil procedure to which allusion is made in the article we annotate are those contained in articles 1393 et seq. of that for the Peninsula, 1391 of that for Cuba and Porto Rico, and 1375 of that for the Philippines.

The supreme court in an opinion of September 27, 1889, established: That it can not be said that a creditor was cited in a legal manner when, notwithstanding that his domicile appears in the insrtument of credit, he is not personally cited for the meeting, in accordance with article 1133 of the law of civil procedure, nor is the right granted the debtor made use of, by article 1145 of the same, by which the settlement does not bind him, nor does the notification of the decision of approval of the agreement made extemporaneously prejudice him.

ART. 905. By virtue of the settlement, should there not be an express stipulation to the contrary, the credits shall be extinguished in the part from which the bankrupt was discharged, even though there should remain a surplus from the assets of the bankruptcy, or he should subsequently improve his fortune.

ART. 906. If the debtor with regard to whom the settlement has been drawn should not comply therewith any of his creditors may demand the rescission of the settlement and the continuation of the bankruptcy before the judge of court which may have taken cognizance thereof.

It can not be affirmed that a judgment recognizes the right alleged in applying article 906 of the code now in force to a matter prior to its date, when what is really done is to apply the old provisions, invoking said article only to strengthen the argument. (Opinion of June 6, 1895. *Gaceta* of September 11.)

A judgment rescinding a contract accepted at a meeting of creditors of an association and which declares the bankruptcy of the same does not violate the provisions of articles 872, 906, and paragarph 2 of article 876 of the code of commerce through noncompliance with a part thereof to which he was bound by the said settlement. (Opinion of October 1, 1894. *Gaceta* of November 13.)

ART. 907. In case there should not have been the special agreement mentioned in article 905 the creditors who are not fully paid with the amount they receive from the assets of the bankruptcy until the conclusion of the liquidation of the same shall preserve the right of action for the amount still due them on the property which the bankrupt may or is able to acquire subsequently.

This article is a complement to article 905 referred to. See articles 921 and 928 of this code.

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SECTION FIFTH.—*Rights of creditors in cases of bankruptcy and their respective classification.*

ART. 908. The merchandise, goods, and any other kind of property which may compose the assets of the bankruptcy, the ownership of which may not have been transferred to the bankrupt legally and irrevocably, shall be considered as another's property and shall be placed at the disposal of its legitimate owners after an acknowledgment of their right at a meeting of creditors or in a final judgment, the assets retaining the rights which the bankrupt may have in said property, in whose place the former shall be substituted, provided the proper obligations are complied with.

See articles 457, 510, and 879 of this code.

ART. 909. There shall be considered as included in the provisions of the foregoing article for the purposes indicated therein—

1. The unappraised and appraised dowry property which may remain in the possession of the husband if its receipt appears in a public instrument recorded in accordance with articles 21 and 27 of this code.

2. The paraphernal property which the wife may have acquired by reason of inheritance, legacy, or gift, either in the manner in which it was received or if it has been subrogated or inverted into other property, provided the inversion or subrogation was recorded in the commercial registry in accordance with the provisions contained in the articles cited in the foregoing number.

3. The property and goods the bankrupt may have on deposit, under administration, leased, rented, or of which he enjoys the usufruct.

4. The merchandise the bankrupt may have in his possession ordered to be sold, purchased, transferred, or delivered.

5. The drafts or promissory notes which without indorsement or any statement which transfers their ownership should have been sent the bankrupt for collection, and those he may have gained possession of for the account of another, drawn or indorsed directly in favor of the principal.

6. The moneys forwarded outside of account current to the bankrupt for delivery to a determined person in the name and for the account of the principal, or to satisfy obligations which are to be met in the domicile of the former.

7. The amounts which are owed the bankrupt by reason of sales made for the account of another, and the drafts or promissory notes of the same character which are in his possession, even though they are not drawn in favor of the owner of the merchandise sold, provided it is proven that the obligation arises therefrom and that they were in the possession of the bankrupt for the account of the owner in order to be cashed, and the amounts thereof to be forwarded at the proper time, which shall be legally presumed if the amount should not have been entered on account current between both.

8. The goods sold to the bankrupt for cash, the price of which has not been paid at all or only in part, while they remain packed in the warehouses of the bankrupt or in the manner in which the delivery was made, and when they are in such condition as to be specifically distinguished by the marks and numbers of the packages or bales.

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9. The merchandise which the bankrupt may have purchased on credit, until the material delivery of the same has not been made to him in his warehouses or in a place agreed upon, and that the bills of lading or shipping receipts which may have been forwarded to him, after being shipped, by order and for the account and risk of the purchaser.

In the cases of this number and of number 8 the receivers may retain the goods purchased or demand them for the assets paying the price thereof to the vendor.[a]

See articles 32 et seq. of the commercial registry regulations and the third appendix of this code.

ART. 910. There shall also be considered as included in the provisions of article 908, for the purposes determined therein, the amount of the bank notes in circulation of banks of issue, in case of the bankruptcy of these institutions.

ART. 911. From the proceeds of the property of the bankruptcy, after making the deductions prescribed in the foregoing articles, the creditors shall be paid in accordance with the provisions contained in the following articles:

See articles 926, 927, 932, and 941 of this code.

ART. 912. The graduation of the credits shall be made by dividing them into two sections. The first one shall include the credits which are to be paid from the proceeds of the personal property of the bankruptcy, and the second those which are to be paid from the proceeds of the real estate.

ART. 913. The preference of the creditors of the first section shall be established in the following order:

1. The creditors specially preferred in this order—

a. The creditors by reason of burial, funeral and probate expenses.

b. The creditors by reason of furnishing support to the bankrupt or to his family.

c. The creditors by reason of personal services, including the commercial employees, for the six months immediately preceding the bankruptcy.

2. The preferred creditors who are given a preferred right in this code.

3. The creditors preferred by common law, and the legal mortgage creditors in the cases in which, in accordance with the said law, they are preferred with regard to personal property.

4. The creditors, appearing to be such by public instruments, together with those who are such by reason of commercial instruments or contracts in which an agent or broker has taken part.

5. The common creditors through commercial transactions.

6. The common creditors according to the civil law.

The preferred creditors referred to in number 2 of the article we annotate are, among others, those referred to in articles 98, 196, 276, 372, 375, 403, 580, and 791 of this code, and the mortgage creditors mentioned in number 3 are those referred to in article 168 of the mortgage law.

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[a] With regard to the modifications which are considered as advisable for this article, see the project of law published in the *Gaceta* of April 27, 1892, which we insert as an appendix.

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ART. 914. The preference to be observed in the payment of the creditors of the second section shall conform to the following order:

1. The creditors with a property right, in the terms and in the order established in the mortgage law.

2. The creditors specially preferred and the others mentioned in the foregoing article, in accordance with the order established therein.

With regard to the provisions of number 1, see articles 26, 51, and 64 of the mortgage law.

In case the owner of a vessel should be declared bankrupt, there shall be considered as included in the article we annotate the credits secured by a mortgage on the said vessel, and the others which have preference over the same in accordance with the provisions of the marine mortgage law. (Art. 51 of the same.)

ART. 915. The amounts which the legal mortgage creditors may receive from the personal property after it has been sold, shall be credited on account of what they are to receive through the sale of the real property; and should they have received the full amount of their credit, it shall be considered as canceled, and the creditors following in order of dates shall then be paid.

ART. 916. The creditors shall receive their credits without distinction as to date, pro rata within each class, and in accordance with the order indicated in articles 913 and 914.

Exceptions are:

1. The mortgage creditors, who shall collect in the order of the dates of the record of their instruments.

2. The creditors whose credits appear in public or commercial instruments, in which agents or brokers have taken part, who shall also collect in the order of the dates of their instruments.

There are reserved, notwithstanding the foregoing provisions, the preferences established on a determined article, in which case, should several creditors of the same class appear, the general rule shall be observed.

ART. 917. The proceeds of the sale shall not be distributed among the creditors of one grade, letter, or number of those designated in articles 913 and 914, unless all the credits of that grade, letter, or number of the said articles are entirely paid, according to their order of preference.

ART. 918. The creditors having a security established in a public instrument or in a certificate in which an agent or broker has taken part, shall not be obliged to turn into the assets the securities or objects they may have received as security, unless the receivers in bankruptcy should desire to recover the same by paying the credit in question in full.

Should the receivers not make use of this right, the creditors having security which can be quoted on exchange may sell the same when the debt falls due, in accordance with the provisions of article 323 of this code; and should the pledges be of a different kind, they may alienate them with the intervention of a licensed broker or agent, should there be any, and otherwise at a public auction held before a notary.

The surplus which there may be after the credit has been extinguished shall be turned over to the assets.

If, on the contrary, there should still remain a balance against the bankrupt, the creditor shall be considered as a creditor whose credit appears in a public instrument, in the place corresponding to him according to the date of the contract.

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As an explanation of the provisions of this article, see articles 320, 324, and number 9 of article 913 of this code.

ART. 919. The mortgage creditors, either voluntary or legal, whose credits are not covered by the sale of the real estate which may have been mortgaged in their favor, shall be considered with regard to the balance as creditors whose credits appear in a public instrument, being included in the rest of this grade according to the date of their instruments.

SECTION SIXTH.—*Discharge of bankrupts.*[a]

ART. 920. Fraudulent bankrupts can not be discharged.

ART. 921. The bankrupts not included in the foregoing article may obtain their discharge by proving that they have fully complied with the approved adjustment they may have made with their creditors.

Should there have been no agreement, they shall be obliged to prove that all the obligations acknowledged in the bankruptcy proceedings were liquidated with the assets of the same, or through subsequent payments.[b]

See the third appendix after this code.

ART. 922. With the discharge of the bankrupt all the legal interdictions which a declaration of bankruptcy gives rise to shall cease.

SECTION SEVENTH.—*General provisions regarding the bankruptcy of commercial associations in general.*

ART. 923. The bankruptcy of a general or limited copartnership includes that of the members who may have a joint liability therein, in accordance with articles 127 and 148 of this code, and shall produce with regard to all of said partners the effects inherent in the declaration of bankruptcy, but the respective liquidations always being kept separated.

ART. 924. The bankruptcy of one or more partners shall not in itself produce the bankruptcy of the copartnership.

But it will produce the total dissolution of the association, in accordance with the provisions of number 3 of article 222 of this code.

ART. 925. If the partners in limited copartnerships or stockholders of corporations should not have delivered at the time of the bankruptcy the full amount they bound themselves to contribute to the association, the receiver or receivers of the bankruptcy shall have a right to demand of them the liabilities which may be necessary within the limit of their respective liability.

ART. 926. The special partners, the stockholders of corporations and those of joint-stock companies, who are at the same time creditors of the bankruptcy, shall not appear in the liabilities of the same except for the difference appearing in their favor after the amounts they were obliged to contribute as such members should be provided for.

The associations referred to in this article are those treated of in the following section of this code, and not other kinds of associations. (Opinion of May 16, 1895. *Gaceta* of August 26.)

ART. 927. In general copartnerships the private creditors of the partners whose credits should be prior to the constitution of the

[a] With regard to the discharge of bankrupts, see article 1388 of the law of civil procedure.

[b] See the note to article 909, which is also applicable to article 921.

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association shall be placed in the same category as the creditors of the latter, and in their proper place and grade, in accordance with the provisions contained in articles 913, 914, and 915 of this code.

Subsequent creditors shall only be entitled to recover their credits from the balance, should there be any, after the debts of the association have been satisfied, the preference granted by law to preferred and to mortgage credits always being reserved.

ART. 928. The settlement in cases of the bankruptcy of corporations which are not in liquidation may have for an object the continuation or the transfer of the enterprise, with the conditions fixed in the said settlement.

ART. 929. The associations shall be represented during the bankruptcy in the manner which may have been foreseen for such cases in the by-laws, and in the absence thereof, by the board of directors; and they may at any stage thereof submit to the creditors the propositions of settlement which they may consider proper, which must be decided in accordance with the provisions contained in the following section.

SECTION EIGHTH.—*Suspension of payments and bankruptcy of railroad and other public-work companies or enterprises.*

ART. 930. Railroad companies and others devoted to works of general, provincial, or municipal public service, which find themselves unable to meet their obligations, may appeal to the judge or court, requesting a declaration of suspension of payments.

The declaration of suspension of payments may also be made at the instance of one or more legitimate creditors, as such being understood, for the effects of this article, those mentioned in article 876.

ART. 931. The service of the operation of railroads or any other public works can not be interrupted through any judicial or administrative action.

See section 9, title 1, book 2, and article 372 of this code.

ART. 932. The company or enterprise which desires to suspend payments requesting a settlement with its creditors must accompany their petition with the balance of the assets and liabilities.

For the effects relating to the settlement, the creditors shall be divided into three groups. The first shall include the credits for personal services and those proceeding from the exercise of the right of eminent domain, and for works and material; the second, the mortgage obligations issued for the capital which they themselves represent, and for the coupons and amortization which have fallen due and have not been paid, the coupons and amortization being computed for their full value, and the obligations according to the rate of issue, this group being divided into the number of sections equal to that of the issue of mortgage obligations; and the third, all other credits, whatever be their nature and order of preference to each other and with regard to the preceding groups.

See the provisions of article 186 with regard to the preference in the payment of the issues of these securities.

ART. 933. If the company or enterprise should not present the balance in the manner prescribed in the foregoing article, or if the declaration of suspension of payments should have been requested by creditors proving the conditions required in the second paragraph of article 930, the judge or court shall order that a balance be struck

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within the period of fifteen days, and if the same should elapse without the balance being presented it shall be made officially within the same period and at the expense of the debtor company or enterprise.

ART. 934. The declaration or suspension of payments made by the judge or court shall produce the following effects:

1. It shall suspend executions and judicial decrees.

2. It shall obligate the companies and enterprises to deposit in the treasury or in the banks authorized to accept the same, the surplus, after meeting the expenses of management, operation, and construction.

3. It shall obligate the companies or enterprises to present to the judge or court, within the period of four months, a proposition of settlement for the payment of the creditors, previously approved at an ordinary or extraordinary meeting of the shareholders, if the debtor company or enterprise should have been established on shares.

ART. 934. (Cuba and Porto Rico.) The declaration or suspension of payments made by the judge or court shall produce the following effects: First, it shall suspend executions and judicial decrees; second, it shall obligate the companies and enterprises to deposit in the treasury or in the banks authorized to accept the same, the surplus, after meeting the expenses of management, operation, and construction; third, it shall oblige the companies or enterprises to present to the judge or court, within the period of four months, a proposition of settlement for the payment of the creditors, previously approved at an ordinary or extraordinary meeting by the shareholders, if the debtor company or enterprise should have been established on shares.

ART. 935. The settlement shall be approved if it is accepted by those representing three-fifths of each of the groups or sections mentioned in article 932.

It shall also be considered as approved by the creditors if there should not have attended within the first period fixed for the purpose a sufficient number to make up the majority which is above referred to, and at a second call it should be accepted by the creditors who represent two-fifths of the total of the first two groups and of their sections, provided there is no objection exceeding two-fifths of any of said groups or of the total liabilities.

ART. 936. Within the fifteen days following the counting of the votes, if the result should have been favorable to the settlement, the dissenting creditors and those who may not have attended may object to the settlement by reason of defects in the call of the creditors, and in the signatures of the latter, or for any of the reasons stated in numbers 2 to 5 of article 903.

ART. 937. After the settlement has been approved without objection, or if said objection has been disallowed by a final judgment, it shall be obligatory for the company and for all the creditors whose credits are of a date prior to the suspension of payments, should they have been cited in a legal manner, or, if having been notified of the settlement they should not have objected thereto in the terms prescribed in the law of civil procedure.

Articles 1389 et seq. of the law of civil procedure for the Peninsula, 1387 of that for Cuba and Porto Rico, and 1371 of that for the Philippines, refer to settlement between creditors and bankrupts.

ART. 938. The declaration of the bankruptcy of companies or enterprises shall be proper when they request it, or at the instance of a

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legitimate creditor, provided any of the following conditions is proven in the latter case:

1. If four months should elapse from the declaration of suspension of payments without the proposed settlement being presented to the judge or court.

2. If the settlement should be disapproved by a final judgment or if sufficient signatures to approve it should not meet within the two periods referred to in article 935.

3. If the settlement having been approved, it should not be complied with by the debtor company or enterprise, provided that in the latter case it is requested by creditors representing at least one-twentieth of the liabilities.

ART. 939. After the declaration of bankruptcy has been made, if the concession should still be in force, the Government or the corporation which granted it shall be informed thereof, and a board of receivers shall be established, composed of a president appointed by said authority; two members appointed by the corporation or enterprise; one for each group or section of creditors and three members selected from among the latter.

ART. 940. The board of receivers shall provisionally organize the service of the public work; it shall administer and operate it, being furthermore obliged:

1. To deposit the proceeds in the general treasury as a necessary deposit, after deducting and paying the expenses of administration and operation.

2. To deposit in the same treasury, and also as a necessary deposit, the cash on hand or securities the company or enterprise may have at the time of the receivership.

3. To exhibit the books and papers belonging to the company or enterprise when proper or when ordered to do so by the judge or court.

ART. 940. (Cuba and Porto Rico.) The board of receivers shall provisionally organize the service of the public work; it shall administer and operate it, being furthermore obliged: First, to deposit the proceeds in the general treasury or in the banks authorized to accept them, after deducting and paying the expenses of administration and operation; second, to deposit in the same place and also as a necessary deposit, the cash on hand or securities the company or enterprise may have at the time of the receivership; third, to exhibit the books and papers belonging to the company or enterprise when proper or when ordered to do so by the judge or court.

ART. 941. In the graduation and payment of the creditors, the provisions contained in the fifth section of this title shall be observed.

See articles 908 to 919 of this code.

TITLE II.—PRESCRIPTIONS.[a]

ART. 942. The periods fixed in this code for bringing the actions arising from commercial contracts can not be extended and are without recourse.

ART. 943. The actions which by virtue of this code do not have a fixed period in which to be brought judicially shall be governed by the provisions of the common law.

[a] Besides the periods fixed in this title for prescriptions, observe those mentioned in articles 85, 342, 475, number 7, articles 781, 793, 797, and 798 of this code.

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ART. 944. The prescription shall be interrupted through suit or any judicial proceeding brought against the debtor, through the acknowledgment of the obligations, or through the renewal of the instrument on which the right of the creditor is based.

The prescription shall be considered uninterrupted by a judicial proceeding if the plaintiff should discontinue it, or the case should lapse, or his objection be disallowed.

The period of the prescription shall begin to be counted again, in case of the acknowledgment of the obligations, from the day this is done; in case of their renewal, from the date of the new instrument, and if the period for meeting the obligation should have been extended, from the date this extension has fallen due.

ART. 945. The liability of exchange brokers, commercial brokers, or ship-broking interpreters in the obligations in which they take part by reason of their office shall prescribe after three years.

ART. 946. The real action against the security of agents shall only be brought within six months, counted from the date of the receipt of the public securities, commercial bonds or funds which may have been delivered to them for negotiation, with the exception of the cases of interruption or suspension mentioned in article 944.

ART. 947. The actions which may be brought by a partner against the copartnership, or vice versa, shall prescribe after three years, counted, according to the cases, from the withdrawal of the partner, his exclusion, or from the dissolution of the copartnership.

It shall be necessary, in order that this period may run, to record in the commercial registry the withdrawal of the partner, his exclusion, or the dissolution of the copartnership. The right to recover the dividends or payments which are declared by reason of profit or capital on the part or share which is due each partner in the association funds, shall prescribe after five years, counted from the day fixed to commence their collection.

ART. 948. The prescription in favor of a partner who withdrew from the copartnership or who was excluded from the same if it appears in the manner indicated in the foregoing article, shall not be interrupted by the judicial proceedings instituted against the copartnership or against another partner.

The prescription in favor of the partner who was part of the copartnership at the time of its dissolution shall not be interrupted by the judicial proceedings instituted against another partner, but shall be by those instituted against the liquidators.

ART. 949. The actions against the managing and directing members of associations shall terminate at the end of four years, to be counted from the time they cease to manage the same for any reason whatsoever.

ART. 950. Actions arising from drafts shall extinguish three years after they have fallen due, should they have been protested or not.

A similar rule shall be applied to drafts and promissory notes of commerce, to checks, stubs, and other instruments of draft or exchange, and to the dividends, coupons, and the amounts of the amortization of obligations issued in accordance with this code.

ART. 951. The actions relating to the collection of transportation, freights, expenses inherent thereto, and the contributions of ordinary averages shall prescribe six months after the goods which gave rise thereto were delivered.

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The right to the collection of the passage shall prescribe after a similar period, to be counted from the day the traveler arrived at his destination, or from the day he should have paid the same.

ART. 952. The following shall prescribe after one year:

1. The actions arising from services, works, provisions, and furnishing of goods or money for the construction, repair, equipment, or provisioning of vessels, or to support the crew, to be counted from the delivery of the goods and money, or from the period stipulated for their payment, and from the time the services or labor were rendered, if they should not have been engaged for a definite period or voyage. Should this be the case, the time of the prescription shall begin to be counted from the end of the voyage or from the date of the contract referring thereto, and should there be any interruption therein, from the time of the definite conclusion of the service.

2. The actions relating to the delivery of the cargo in maritime or land transportation or to the indemnity for delays and damages suffered by the goods transported, the period of the prescription to be counted from the day of the delivery of the cargo at the place of its destination, or from the day on which it should have been delivered according to the conditions of its transportation.

The actions for damages or defaults can not be brought if at the time of the delivery of the respective shipments or within the twenty-four hours following, when damages which do not appear on the exterior of the packages received are in question, the proper protests or reservations should not have been made.

3. The actions arising from expenses of the judicial sale of vessels, cargoes, or goods, transported by sea or by land, as well as those arising from their custody, deposit, and preservation, and the navigation and port expenses, pilotage, rescues, assistance, and salvages, the period to be counted from the time the expenses were incurred and the assistance given, or from the conclusion of the proceedings, if any should have been instituted on the case.

ART. 953. The actions to demand indemnity for collisions shall prescribe after two years from the accident.

These actions shall not be admissible if the proper statement should not have been made by the captain of the vessel damaged, or by the persons exercising his duties, at the first port which may be made, in accordance with cases 8 and 15 of article 612, when they may occur.

ART. 954. Actions arising from loans on bottomry or respondentia or from marine risks shall prescribe after three years from the period of the respective contracts or from the date of the accident which gives rise thereto.

TITLE III.—GENERAL PROVISIONS.

ART. 955. In cases of war, officially declared epidemic or revolution, the Government may, if it is resolved upon by the council of secretaries and the Cortes are informed thereof, suspend the action of the periods fixed by this code for the purposes of commercial transactions, fixing the points or places where it considers the suspension advisable, when the latter is not to be general for the whole Kingdom.

ART. 955. (Philippines.) *For a better understanding and application of this code there shall be considered as Spaniards all persons who, according to the constitution of the Monarchy, are thus considered.*

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THE COMMERCIAL REGISTRY REGULATIONS.

ROYAL DECREE.

Taking into consideration the reasons stated to me by the Secretary of Grace and Justice, in conformity with the opinion of the Council of Secretaries, and after hearing the Council of State,

I hereby approve the attached regulations for the organization and government of the commercial registry as provisional, which shall go into operation from January 1, 1886.

Given at the Palace on December 26, 1885.

MARIA CRISTINA.

MANUEL ALONSO MARTINEZ,
Secretary of Grace and Justice.

PROVISIONAL REGULATIONS FOR THE ORGANIZATION AND GOVERNMENT OF THE COMMERCIAL REGISTRY.[a]

CHAPTER I.—*Commercial registries and officials in charge thereof.*

ARTICLE 1. From January 1, 1886, there shall be established in each capital of a province of the Peninsula, Balearic Islands and Canaries, the commercial registry ordered to be opened by article 16 of the code of commerce and to consist of two books of merchants and associations.

The third book destined to the recording of vessels shall be established in Sevilla, in the capitals of the coast provinces which are at the same time seaports, and in the capital of the respective maritime province when the former do not include said condition.[b]

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[a] These regulations with the proper amendments, which are indicated below, were extended to the islands of Cuba and Porto Rico by a royal decree of June 12, 1886.

[b] The same article, amended for Cuba and Porto Rico, is as follows:

ARTICLE 1. From May 1, 1886, there shall be established in each of the six provinces of the island of Cuba, and in the capital and city of Ponce, in the island of Porto Rico, the commercial registry ordered to be opened by article 16 of the new code of commerce, and to consist of two books for merchants and associations.

The third book destined to the recording of vessels shall be established in Habana for that province and for the province of Pinar del Rio; in Matanzas and Santiago de Cuba for the respective provinces; in Cienfuegos for the province of Santa Clara, and in Nuevitas for that of Puerto Principe, as well as in San Juan Bautista de Puerto Rico and in Ponce for that island.

The commercial registry of the capital of Porto Rico shall include the territories of the two inferior courts of the capital and those of Arecibo, Humacao, Caguas, and Aguadilla; that established in Ponce shall include the territories of those of Ponce, Mayagüez, San Germán, and Guayama.

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ART. 2. Until the commercial registries are established in the manner prescribed in article 32 of said code, the registers of property shall temporarily take charge of these offices, and in their absence the prosecuting attorney of the municipal court shall do so, who shall, in so far as this service is concerned, be immediately under the jurisdiction of the general direction of the civil and property registries and of notaries.

ART. 3. Should there be two or more registers of property in any capital of a province, the one designated by the direction shall discharge the duties of commercial register.

ART. 4. All the expenses necessary to keep the registries, including the books, indices, and seal, without prejudice to their remaining the property of the State, shall be defrayed by the commercial registers.

CHAPTER II.—*Manner of keeping the registries.*

ART. 5. The commercial registry shall be open every day which is not a holiday for six hours, which shall be made known to the public by means of an advertisement in the official bulletin of the respective province, besides doing so on the door of the office.

ART. 6. The three books of the registry shall be kept in volumes or pamphlets composed of handmade linen paper of the second class, made in Spain, sewed with ribbon and twine, and bound in calfskin, with parchment corners, and board and black cloth covers.

The first two sheets and the last one shall be left entirely in blank. The others shall all have horizontal lines.

On the left side of each sheet there shall be left between two perpendicular lines a space of 2 centimeters for the purpose of entering therein the number of each record.

All the ruled pages shall be numbered in figures according to their order.

ART. 7. The volumes of the book of merchants shall be composed of 100 serviceable folios, those for associations of 200, and those of the registry of vessels of 300.

The covers for the first of said books shall be of 2-ply cardboard, and for the others of 3-ply.

On the back there shall be stated in gilt characters the number of the volume and the section to which it is destined.

ART. 8. The first and the last sheet of every volume, which shall serve as fly leaves, shall be left blank. On the second sheet the register shall write with his own hand the title in the following manner:

"Commercial Registry of the property of ———.

"Book of (private merchants, associations, or vessels). Volume ——."

The register shall take the volume to the municipal judge of the district in which the office is situated in order that it may be examined by the judge. Should the latter not notice any defect the seal of the municipal court shall be affixed to each folio and the judge shall write in his own hand a certificate in the following terms:

"I, ———, municipal judge of ———, hereby certify that, having examined this volume, which is the (the number appearing in the title) of the book of ———, of the commercial registry of this province, is

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composed of ——— serviceable folios, including this one, the binding being in conformity with the legal precepts and the sheets being in accordance with the official form."

Date.

Signature of the judge.

Signature of the secretary.

Should the judge observe any errors in the volume, he shall return it to the register in order that it be substituted by another one not having them.

ART. 9. For every merchant, association, or vessel which is to be recorded in the registry, one page shall be allowed in the proper book, at the top of which the number thereof according to the chronological order of the presentation of petitions or instruments shall appear.

ART. 10. Every page destined to a merchant, association, or vessel shall be composed of the number of folios the register may consider advisable in order to avoid that the transfer to other volumes be often required.

In case all the folios of a record are filled, there shall be stated at the end of the last one the folio of the current volume where the entries are to be continued, and in the latter another entry shall be made of the folio and volume from which it is continued.

The number of the page shall be preserved, adding the word duplicate, triplicate, etc.

ART. 11. The commercial registers shall conform in the drafting of records, memoranda, and certifications to the provisions contained in these regulations.

ART. 12. The registers shall keep in separate pamphlets or volumes an index for each of the books, with the following details:

1. Surname and name of the merchant, title of the association, or name of the vessel, according to the book to which the index refers.

2. Town in which the merchant or the association is domiciled, or registry of the vessel.

3. Number of the page destined to each merchant, association, or vessel, and folio or volume where it can be found.

4. Remarks.

For each letter of the alphabet the register shall devote the number of folios he may consider advisable, and in order to make the entry on the proper one, the initial of the first surname of the merchant, that of the title of the association, or that of the name of the vessel shall be considered.

Even though it may be necessary, by reason of having used all the folios of the page devoted to a merchant, association, or vessel, to continue in another volume it shall not be necessary to include in the third column the number of the folio and of the volume where it is continued.

In the fourth column the register shall enter the number and folio to which the page of the entry is transferred, the folios of which have been filled, without prejudice to making the remarks he may deem advisable or necessary in order to facilitate the search and to avoid errors.

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ART. 13. Besides the books of registry, registers shall have another one which shall be a stub receipt book for the petitions and instruments which may be presented for record.

In said receipts and at the time of the presentation there shall be stated the day and hour it takes place, the name and surname of the person presenting them, the kind and date of the instrument presented, and the name and surname of the person, authority, or official who subscribes them.

The same data shall be entered in the respective stubs, which shall be signed by the person presenting the document.

The return of instruments and petitions shall be made by means of the return of the stub receipt to the register.

In case the latter should be lost, the former shall be returned to the person interested or to his legal representative only, leaving another receipt which shall serve as a security for the register.

The registers shall keep the stub receipts on file, being liable for the delivery of the instruments, the receipts for which may have been lost.

ART. 14. In all commercial registries, statistics shall be kept in accordance with the instructions from the General Direction.

ART. 15. In order that the books and indexes may be uniform in all the registries, the direction shall distribute forms in advance which the registers must follow with regard to the size, kind of paper, and ruling in the purchase thereof.

ART. 16. Registers shall keep in separate bundles, made up in order of presentation:

1. Copies of the petitions and those of all kinds of instruments recorded of which there is no original on file in a notarial protocol or in public archives.

2. The copies of the quotations of public securities, which they are to receive daily from the board of directors, according to the provisions contained in article 80 of the code of commerce, in places where there is an exchange.

3. The copies of bills of sale of vessels authenticated by our consuls.

4. Official communications.

5. The stub receipts referred to in article 13.

They shall furthermore keep under their custody and liability the books which may be delivered to them in compliance with article 99 of the code of commerce, and shall return them only when ordered to do so by the proper person.

ART. 17. The bundles shall be made up by fixed periods, as may be considered advisable in the judgment of the respective register, and shall be kept in cardboard covers, which shall bear the proper title.

ART. 18. In every commercial registry there shall be an inventory of all the books, indexes, and bundles which constitute its archives. Every year the proper additions shall be made thereto.

ART. 19. The registers shall have an ink stamp with the following inscription:

"Commercial registry (or of vessels) of ———."

The seal shall be affixed on all the receipts and on the documents which may have been taken cognizance of in the registry.

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CHAPTER III.—*Entries in commercial registries and their effects.*

§ 1.—*General provisions.*

ART. 20. Private merchants have a right to demand a record in the commercial registry, as such being considered those who, in accordance with articles 1, 2, and 3 of the code of commerce, without constituting an association, and having the necessary legal qualifications, customarily engage in commerce, or who announce their intention of engaging in the commercial transactions included in the said code, or in any other transactions of a similar character.

ART. 21. The record of existing associations which decide to be governed by the new code of commerce is obligatory, as well as for those which are constituted in accordance with the same or special laws, and for owners of vessels.

ART. 22. The record shall be made on the same day it is requested, unless there is a legal obstacle preventing it.

After the record has been made, there shall be placed at the foot of the petition or instrument which may have been presented a memorandum in the following terms:

The foregoing (instrument or petition) is recorded at sheet ——— folio ——— volume ——— of the book of ——— of the commercial registry or registry of vessels of ———.
Date and full signature.

A similar memorandum shall be placed on the copy of the petition, should there be any, and it shall be kept in the archives of the registry, the original or the instruments recorded being returned to the person interested.

In the proper stub of the receipt book the number of the page and the folio and the volume at which the record was made shall be stated.

ART. 23. All the entries relative to each merchant, association, or vessel shall be made at the proper page, one after the other, without leaving blank spaces between them, and shall have a special and correlative numeration.

The registers shall take care that no blank spaces remain in the entries, and that no corrections or erasures are made, or that any writing be done between the lines.

All amounts and dates shall always be written out.

ART. 24. The errors which may be noticed before signing an entry may be corrected by means of the following formula:

"Line ——— of this entry is incorrect, which should be read thus (here the entire line shall be written in the manner it should be)."

ART. 25. At the foot of all records the date they were made and the full signature of the register or of his substitute shall be placed.

ART. 26. In records made by virtue of requests only, the date thereof as well as the day and hour they were presented in the registry shall be stated, and the bundle in which the petition is filed shall be indicated. In records made by virtue of a public instrument, the day and hour of its presentation shall be stated, as well as the names and surnames of the parties thereto, the date and place of its execution, and the name and surname of the notary who authenticated it.

In records made by virtue of instruments issued by the Government or its agents, the day and hour of their presentation, their date and

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the place of issue, and the surname and official position of the authority or official who subscribes them shall also be stated.

In all records the register shall refer to the petitions or instruments by virtue of which they are made, stating the hour and day of their presentation in the registry.

ART. 27. The judges who declare any merchant, association, or owner of a vessel in bankruptcy shall officially forward a mandate to the register, in order that the latter may enter the same by means of a memorandum in the respective page at the end of the last entry.

§ 2.—Special rules for entries in the book of merchants.

ART. 28. A merchant who desires to be recorded in the commercial registry shall present, in person or through a verbal mandate, to the register of the capital of the province in which he is engaged or is about to engage in commerce, a petition drafted on stamped paper of the twelfth class, stating, besides what he may consider advisable, the following details:

1. Name and surnames of the merchant.
2. His age.
3. His status.
4. The kind of commerce in which he is engaged, or is about to engage.
5. The title or name which in a proper case the establishment may have or is to have.
6. The domicile of the same and of the branches, should there be any, either within or without the province.
7. The date on which he began or is to begin to trade.
8. A statement under his liability, to the effect that he is not subject to parental authority; that he has the free disposition of his property, and that he is not included in any of the disqualifications mentioned in articles 13 and 14 of the code of commerce.

With the petition a copy thereof drafted on common paper shall be presented, signed by the person interested, as well as a certificate from the proper municipality stating his enrollment for the purposes of the payment of taxes or a receipt showing that he has paid those for the last quarter.

After the copy has been compared with the original and if they conform, the register shall return the certificate or the receipt.

ART. 29. If the record should be requested by a married woman, she shall also present the public instrument containing the authorization of her husband, and in the absence thereof the instrument proving in a proper case that she trades with the knowledge of her husband; that she did so before her marriage; that she is legally separated from him; that he is subject to guardianship; that he is absent and that his whereabouts is unknown, or that he is suffering the penalty of a civil interdiction.

Should a woman who is engaged in commerce marry, the change of her status will have to be entered in the registry.

ART. 30. The record of private merchants shall contain all the circumstances mentioned in article 28, and furthermore those contained in the petition, and which it may be useful and advisable to enter, in the judgment of the register.

ART. 31. The entry of powers and revocations thereof, and of the permissions granted married women to trade, shall only be made by virtue of the respective instruments, and there shall be copied therein

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the clause containing the powers conferred or their revocation or that of the permission.

ART. 32. For the record of issues which private merchants may make in accordance with the provisions of article 21 of the code of commerce, for that of their total or partial cancellation, and for that of the instruments mentioned in number 12 of article 21 of the same, the provisions contained in articles 40 to 45 of these regulations shall be observed.

ART. 33. In accordance with article 28 of the code of commerce the entry of the instruments referred to in number 9 of article 21 of the same must be requested by the merchant, or by his wife, or by the parents, brothers, or uncles by consanguinity of the wife, as also by those who may have been her guardians, or by those who have or do constitute the dowry in her favor.

ART. 34. In order that the record may be made, it shall be necessary to present the proper instruments with a memorandum to the effect that they have been previously recorded in the registry of property, if there be real estate or property rights included in the dowry or paraphernal property.

In the record relating to paraphernal property the value thereof must be stated, if it appears in the instrument.

In the record of dowry property there shall furthermore be stated the kind of dowry and the name and surname of the person who constituted it, and whether it has been delivered or promised.

ART. 35. Should the merchant not be recorded in the commercial registry, and a dowry instrument, a marriage agreement, or the record of paraphernal property of the woman married to the former should be presented for record, the record of the merchant shall first be made, by virtue of a request including the necessary circumstances, and signed by the same person who requests the entry in favor of the wife.

§ 3.—*Special rules for records in the book of associations.*

ART. 36. The directors, presidents, managers, or representatives of the different kinds of commercial associations mentioned in article 123 of the code of commerce are obliged, in accordance with article 17 of the same, to request the entry in the commercial registry of the province where they are domiciled, of the articles of copartnership or of incorporation of the same, as well as the additional articles which change or modify the former in any manner whatsoever, before beginning to transact business.

ART. 37. In order that the articles of copartnership or of association may be entered they must express at least the details required by articles 125, 145, and 151 of the code of commerce, the domicile of the association, and the business to be transacted.

There must also be stated in said articles, or in any other trustworthy instrument, the date on which business is to begin.

These circumstances shall be included in the record with the proper clearness.

ART. 38. Besides the record of the instruments referred to in article 36 of these regulations, associations must place on record—

1. All acts, resolutions, contracts, and circumstances which may affect the free disposition of the capital or credits, as well as those changing or modifying the conditions of the instruments recorded.

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2. The powers, general as well as special, for specific transactions as well as the modification, constitution, and revocation of the same. For the record of these instruments, registers shall conform to the provisions contained in article 31 of these regulations.

3. The issue of stock, certificates, obligations of all kinds, and bank notes, and the cancellation of the respective entries.

4. Certificates of industrial property, patents, and trade-marks, in the form and manner established by the laws.

5. The extension of the life of the association.

6. Its partial rescission and total dissolution, except when the latter takes place by reason of the termination of the period for which it was established, the records in such cases being voluntary.

ART. 39. In order to record any issue of stock, certificates, or obligations, for the payment of which real property or property rights are declared liable, it shall be indispensable that there be presented the corresponding public instrument already recorded in the registry of property.

The record shall state the series and number of shares of the issue to be recorded, their interest, amortization, and premium, should they have either, the total amount of the issue, and the property interests, works, rights, or mortgages which are liable for the payment of the issue, and any other data which the register may consider of use.

ART. 40. The records of the issue of bank notes, obligations, or instruments payable to order or to bearer, for the payment of which no real property or property rights are liable, shall be made in view of the proper instrument, should one be executed, or of the certificate of the minutes containing the resolution to make the issue, and the conditions, requisites, and guaranties of the same.

The certificate must be issued in the shape of a copy certified to by a notary on the request of a party.

The record shall express all that may be necessary in order that the issue, its conditions and guaranties may be clearly understood.

ART. 41. In order that the records of issues referred to in article 39 may be totally or partially canceled, it shall be sufficient to present the instrument or document of the total or partial cancellation, with a memorandum of its resord in the registry of property, or a certificate with reference to the latter, to the effect that the record made therein has been totally or partially canceled.

ART. 42. In order to totally or partially cancel the records included in article 40, it shall be sufficient to present in the commercial registry a certificate from a notary in which, with reference to the books and instruments of the merchant or association which may have made the respective issue, there is stated the amortization of the certificates, shares, obligations or bank notes, and the full payment of the amount they represent, stating, if the partial cancellation is desired, the series and numbers of those taken up for amortization; it being the duty of the notary to testify that he has seen the certificates, obligations, or bank notes collected and rendered useless taken up for amortization.

ART. 43. The record of cancellation must clearly state the number of that canceled, and whether it is total or partial. In the latter case the certificates, obligations, shares, or bank notes, the amounts of which have been paid, shall be stated.

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ART. 44. The certificates of industrial property, patents, and trademarks shall be recorded after the presentation of the respective instruments, proving that they have been legally granted.

The entry shall state the essential circumstances included in the instrument.

§ 4.—*Special rules for records in the book or registry of vessels.*

ART. 45. The owners of merchant vessels of Spanish registry and flag shall request their registration in the commercial registry of the province where they may have been registered before undertaking their first voyage or the business to which they are destined.

Vessels, for the purposes of the code and of these regulations, shall be considered not only the craft engaged in coast or foreign navigation, but also the floating docks, pontoons, dredging boats, mud scows, and any other floating apparatus destined to industrial or commercial maritime services.

ART. 46. The first record of every vessel shall be that of the ownership thereof, and shall contain the details mentioned in number 1 of article 22 of the code of commerce, as well as the registry of the vessel and her value.

ART. 47. In order that the record of the vessel may take place, there shall be presented in the commercial registry a certified copy of the registry or entry of the vessel, issued by the naval commander of the province of her registry.

ART. 48. When a vessel changes her registry, within the same province, this shall be stated immediately after the last entry which may have been made with regard to said vessel, after the presentation of the certificate of the new registry.

Should the change have been made to another province, a literal certificate of the record of the vessel shall be presented to the register of the capital of the latter, in order that all the entries may be transferred to the page assigned the vessel in said registry, under the following heading:

I hereby certify that on page No. ——, folio ——, volume ——, of the registry of vessels of ———, the following entries appear (copy them literally here); this appears from the certificate issued under date of ——— by ———, commercial register of ———, which, in order that the following entry might be made, has been presented in this registry by ———.

Date and full signature.

Immediately thereafter there shall be entered the change of registry, and the register shall officially inform the person in charge of the registry in which the vessel was previously recorded that he has made the change of registry, giving the number of the page, folio, and volume containing the same.

The last of the said registers shall close the record of the vessel, making immediately after the last entry a memorandum in the following terms:

This record is closed, because the vessel in question has been registered in the registry of ——, page ——, number ——, folio and volume.

Date and signature.

ART. 49. If in the case provided for in article 578 of the code of commerce there should be forwarded to the register a copy of the bill

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of sale of a vessel, he shall acknowledge receipt thereof to the consul, and shall make a memorandum immediately after the last entry made on the record of the vessel, in the following terms:

Memorandum.—According to an instrument executed under date of ———, before the consul of ———, the vessel mentioned on this page has been sold to ———.

Date and signature.

The copy shall be kept in the archives in a special bundle, and the record shall not be made until the persons interested or any one of them present the bill of sale; but until the latter is recorded no other entries transferring or encumbering the said vessel shall be made.

ART. 50. The captains of the vessels must provide themselves with a certificate of the record of the registry, without which they can not undertake the voyage.

This certificate, which must be literal and which must be authenticated by the captain of the port of departure, shall be considered as sufficient title for the proof of ownership and for her transfer or for the placing of incumbrances by means of a statement written and signed by the contracting parties at the foot of the former, with the intervention of a notary in Spain or consul abroad, who shall testify as to the truth of the act and the legality of the signatures.

Contracts executed in this manner shall have all their effects from the time they are recorded in the commercial registry.

The entry shall take place by presenting either the said record of the registry of the vessel or a literal certificate or the contract authenticated by the shipowner or agent, and in their absence by the captain of the vessel and by the said notary or consul who may have taken part therein.

A new certificate shall not be necessary for each voyage. It shall be sufficient that immediately after the first one which may have been issued all the entries which may have subsequently been made in the respective record of the vessel be certified to.

ART. 51. The certificate of the record of a vessel referred to in the foregoing article, as well as in article 612 of the code of commerce, must be authenticated by the captain of the port of departure who signs the certificate of navigation and the other instruments relating to the vessel.

ART. 52. A memorandum shall be made of the incumbrances which, in accordance with articles 580, 583, and 611 of the code of commerce are placed on a vessel during the voyage, and which according to article 50 of these regulations must be made with the intervention of a notary in Spain and of the consul abroad, which these officials shall keep in their protocols or archives.

Even though the contracts by which these incumbrances are placed, are effective from the time of being entered in the record of the vessel, for the purposes of article 580 of the code, they must be recorded at the end of the voyage in the proper registry.

ART. 53. The owners of vessels sold to a foreigner must present a copy of the bill of sale in the registry in order that the records corresponding to the same may be closed. The notaries and the consuls who may have authorized any instrument alienating a Spanish vessel in favor of a foreigner shall, within the third day, inform the person in charge of the registry thereof, who shall make the proper memorandum in the open record of the alienated vessel.

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ART. 54. The extinction of recorded credits shall, as a general rule, be entered by previously presenting a public instrument or trustworthy document containing the consent of the person in whose favor the record was made, or of the person who proves in due form that he is his legal or personal representative.

In the absence of said instruments a judicial mandate ordering the cancellation must be presented.

If the extinction of the credit takes place by force of law in virtue of an act independent of the will of the persons interested, it shall be sufficient to prove with a trustworthy document the existence of the act which gives rise to the cancellation.

In accordance with the provisions contained in article 582 of the code of commerce, all records prior to the date of the bill of the judicial sale of the vessel shall be considered as legally extinguished.

ART. 55. The records of cancellation shall state clearly if they are total or partial, and in the latter case the amount of the credit paid and the amount still due.

ART. 56. After the disappearance of a vessel or her destruction or alienation to a foreigner has been entered in the registry of the same, the naval chief of the province shall officially inform the commercial register thereof, in order that the latter may make a memorandum at the end of the last entry in the following terms:

According to a communication of ———, dated ———, the vessel above referred to (here state what has taken place), date, and signature.

After this memorandum has been made, no entry whatsoever with regard to the vessel can be made.

CHAPTER IV.—*Publicity of the commercial registry.*

ART. 57. Persons who desire to obtain information with regard to a merchant, association or vessel from the commercial registry may do so in any of the following manners:

1. By the exhibition of the registry.
2. By a certificate with regard to the books.

ART. 58. The register may, at the verbal request of any person, exhibit the page referring to the merchant, association, or vessel which may be designated, in order that it may be examined, and such memoranda taken therefrom as may be considered proper.

ART. 59. The certificate may be obtained by making a request for the same in writing on stamped paper of the twelfth class.

In the request there shall clearly be stated the name of the merchant, association, or vessel, and the record or records to be certified to.

ART. 60. The certificate may be literal or in abstract, as it may be requested, and shall be drafted immediately after the request, adding the sheets of paper of the same class which may be required. Both must state whether besides the record or records they include there exist or not other ones relating to the same merchant, association, or vessel.

If a certificate of a record which has been canceled should be requested, the register shall state this fact, even though he may not be requested to do so.

Should there be no records of the kind requested, a certificate to this effect shall be given.

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ART. 61. The commercial registers shall exhibit to any person requesting it copies of the official quotations.

They shall also issue certified copies of the same by virtue of a written request on stamped paper of the twelfth class.

ART. 62. The certificates shall be drafted within the shortest period possible, which shall never exceed two days.

ART. 63. Registers shall submit in writing to the judges, courts, and authorities any data which may officially be requested of them, and which appear in the commercial registry, without collecting any fees when the request has not been made at the instance of an individual.

CHAPTER V.—*Rights and liabilities of registers.*

ART. 64. Commercial registers shall earn the fees which are due them strictly in accordance with the schedule which is attached to these regulations.

They can not collect any fees for any work they may do for which fees are not fixed.

ART. 65. At the foot of the respective records, memoranda, and certificates the registers shall state the fees they collect without prejudice to giving a special receipt if requested to do so by the persons interested.

ART. 66. In every registry a book of receipts shall be kept, in which all the fees earned in the order of presentation of the respective instruments shall be entered, even though the same have not been collected.

TRANSITORY PROVISIONS.

1. On the 31st of December of the current year, after office hours, the chief of the section of the interior of the government of the province[a] shall deliver, with an inventory in duplicate, all the books, indices, and packages which make up the archives of the registry of commerce to the respective register.

The inventory shall be signed by both officials and stamped with that of the government of the province,[b] and each one of the former shall keep one copy.

This inventory shall serve as a basis for those to be kept in the commercial registries, according to article 24 of the regulations.

At the end of the last entry made in each book a memorandum in the following terms shall be made:

Memorandum.—This book containing (so many) entries is closed, the last entry being that of (here whatever it may be).

Date, signature of both officials and seals.

2. From the day these regulations are published and in accordance with the provisions contained in article 3 of the royal decree of August 22, 1885, mercantile corporations which may be in existence on December 31 of this year, and which may be domiciled in provinces, may present an authenticated copy of their resolutions in accordance with the provisions of the new code to the registry of property of the respective capitals.

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[a] "The 30th of April of the current year, after office hours, the secretary of the general government or that of the proper province," according to the same rule of this article of the regulations amended for Cuba and Porto Rico.

[b] The article amended says "with that of the general government."

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3. Articles of association which are executed subsequently to the publication of the code of commerce and before the date the same goes into operation, may be recorded in the commercial registries, if they are in accordance with the provisions of the former, even though they do not contain all the requisites of the prior law.

4. The general direction of registries and of notaries shall issue the proper provisions in order that the commercial registries may begin to transact business with due regularity on January 1, 1886, as well as those for the execution and fulfillment of these regulations.[a]

5. The temporary registers shall submit every six months to the said direction a report on the inconveniences they may have noticed in the application of these regulations, in order that they may be taken into consideration for the amendments which are to be made at the proper time in this branch of commercial legislation.

Approved by Her Majesty:

MANUEL ALONSO MARTINEZ.

MADRID, *December 21, 1885.*

SCHEDULE OF FEES FOR COMMERCIAL REGISTERS.[b]

	Pesetas.
No. 1. For every entry made in the book of merchants not mentioned in the following numbers	2
No. 2. For the entry of a change of any circumstance relating to a private merchant	1
No. 3. For the entries of powers, their modification, substitution, or revocation, and for the entry of certificates of industrial property, patents, and trade-marks in any of the books	3
No. 4. For entries of dowries, marriage contracts, or paraphernal property	4
No. 5. For the first entry of any association, and for records of issues of all kinds, the fees indicated below shall be charged:	
If the capital or the amount of the issue does not exceed 250,000 pesetas	5
If over this amount and not more than 500,000	10
If over 500,000 and not more than 1,000,000	15
If over 1,000,000 and not more than 2,000,000	20
If over 2,000,000	25
No. 6. For the registration of any vessel or change in the circumstances thereof	2

[a] The same rule of the article of the regulations amended for Cuba and Porto Rico is as follows:

"4. The general direction of grace and justice of the colonial department shall issue the proper provisions in order that the commercial registries may begin to transact business with due regularity on May 1, 1886, as well as those for the execution and fulfillment of these regulations."

[b] The same officials shall, in Cuba and Porto Rico, collect the following fees: In the case of No. 1, 0.80 peso; 0.40 in that of No. 2; 1.20 in that of No. 3; 1.60 in that of No. 4; and in that of No. 5, if the social capital or the amount of the issue does not exceed 100,000 pesos, 2 pesos; if over 100,000 and not more than 200,000, 4 pesos; if over 200,000, and not more than 400,000, 6 pesos; if over 400,000 and not more than 800,000, 8 pesos; if over 800,000, 10 pesos; in the case of No. 6, 0.80; in that of No. 7, if the amount of the insurance does not exceed 100,000 pesos, 2 pesos; if over 100,000 and not more than 200,000, 4 pesos; from 200,001 to 400,000, 6 pesos; if over 400,000, 8 pesos; in the case of No. 8, 2 pesos; in that of No. 9, 0.40; in that of No. 10, 0.40; in that of No. 11, 0.40; Nos. 12 and 13 the same as for the Peninsula; in the case of No. 14, 0.40; in that of No. 15, 0.40; in that of No. 16, 0.40; and 2 pesos in the case of No. 17.

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	Pesetas.
No. 7. For the entries of contracts by virtue of which vessels are rendered liable for the payment of an obligation there shall be collected:	
If the amount of the obligation secured does not exceed 250,000 pesetas	5
If over said amount and not more than 500,000	10
From 500,001 to 1,000,000	15
If over 1,000,000	20
No. 8. For entries made in the book of associations and in the registry of vessels not mentioned in the foregoing numbers	5
No. 9. For every memorandum to be made in the books of the registry, according to the provisions contained in the regulations	1
No. 10. For the transfer of every entry from one registry to another	1
No. 11. For the exhibition of a record in any of the books	1
No. 12. For a literal certificate of every entry, one-quarter of the fees which would have been charged for said record.	
No. 13. For a certificate in abstract of every entry, one-eighth of the amount which would have been charged for the record itself.	
No. 14. For a record of every official quotation on exchange	1
No. 15. For a certificate of every quotation	1
No. 16. For any negative certificate	1
No. 17. For the custody of books in the case of article 99 of the code of commerce	5

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COMMERCIAL EXCHANGE REGULATIONS.

ROYAL DECREE.

Taking into consideration the reasons stated to me by the secretary of grace and justice, in conformity with the opinion of the council of secretaries, and after hearing the council of state,

I hereby approve, as temporary, the annexed regulations for commercial exchanges and licensed agents, which shall go into operation on January 1, 1886.

Given at the Palace on December 31, 1885.

MARIA CRISTINA.

MANUEL ALONSO MARTINEZ,
Secretary of Grace and Justice.

PROVISIONAL REGULATIONS FOR THE ORGANIZATION AND MANAGEMENT OF COMMERCIAL EXCHANGES.[a]

CHAPTER I.

ARTICLE 1. The commercial exchange actually in existence in Madrid shall continue to transact business in accordance with the provisions contained in the Code of Commerce and in these regulations.

In order to establish new commercial exchanges in any town of the Kingdom[b] with an official character, either general or special, there must exist reasons of public utility or convenience, which shall be stated in proceedings and in which the council of state shall be heard. The final decision shall be rendered by means of a royal decree on the recommendation of the secretary of the interior.

The authorization requested by corporations or private parties to create such establishments shall be granted in the same manner.

ART. 2. General or special commercial exchanges of a private character may only be created by associations established in accordance with the code when the power of doing so is one of their social ends.

[a] These regulations, with some unimportant modifications, which are indicated by means of footnotes to the respective articles, were extended to the islands of Cuba and Porto Rico by a royal decree of April 16, 1886, and went into force in said islands on May 1, 1886. In order to avoid useless repetitions it should be remembered that the numbering of the articles, and therefore the number thereof, is identical in both regulations; that where there appears in the regulations for the Peninsula "*Department of the Interior*," those amended say "*Department of the Colonies;*" "*Habana*" instead of "*Madrid*," treating of exchanges; "*Gaceta de la Habana and Puerto Rico*" instead of "*Gaceta de Madrid;*" "*Spanish Bank of the Island of Cuba*" instead of "*Spanish Bank;*" etc.

[b] "*Of the islands of Cuba and Puerto Rico*," according to article 1 of the regulations in force in the same.

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In order that the quotations of the transactions made and published in these establishments may have an official character, the proper authorization must be obtained from the Government, which shall be granted after the proceedings and requisites mentioned in the foregoing article.

ART. 3. With regard to exchanges which have been created on the exclusive initiative of the government, the expenses of their establishment and of the personnel and material shall be charged to the general budget[a] of the State. These expenses shall be fixed by the department of the interior[b] after hearing the board of directors and the officials, and employees of the institution shall be public employees, whose appointments shall be made by the government[c] on the recommendation of the board of directors, and can not be removed except by virtue of proceedings in which the persons interested and the board of directors shall be heard.

ART. 4. In the exchanges, the establishment of which is authorized by the government in towns which request it by reason of convenience for public transactions, the government may contribute for the expenses of their creation and support the amount it may consider advisable by way of subsidy, and with the conditions and reservations it may consider proper, which shall be included in the authorization.

The expenses of the creation and support of the exchanges established by associations shall be defrayed exclusively by the same, and shall therefore unrestrictedly appoint and remove the employees; but they must always inform the department of the interior[d] thereof.

ART. 5. The commercial exchanges, by reason of their character as public establishments, the purpose of which is to agree upon and fulfill the commercial transactions mentioned in the code of commerce, shall come under the jurisdiction of the department of the interior.

With regard to public order, the exchanges shall be subject to the inspection of the civil governor in the capitals of provinces and to that of the superior administrative authority in other towns, and said inspection shall be made in the name and representation of the same by an inspecting delegate appointed by the Crown.

The board of directors of the association of agents shall have the interior government and police of the exchange in charge and shall discharge the duties which are proper in accordance with the code of commerce and the provisions of these regulations.

ART. 6. No authority, with the exception of the governor of the province, and in his absence of the superior administrative authority of the locality, may exercise his powers in exchanges, except when called upon by the inspector or by the board of directors.

ART. 7. The representation of the Commercial Exchange, in so far as the transaction of business is concerned, corresponds to the board of directors of the association of stock and exchange brokers, under the dependency of the department of the interior, and in accordance with the provisions of the code.

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[a] "*Of the island in which they are created,*" according to the regulations of said islands.

[b] "*The department for the colonies, hearing the Governor-General and the board of directors*" say the amended regulations.

[c] "*By the said department on the recommendation of the board of directors submitted through the said Governor-General.*"

[d] The regulations amended for the said island adds, "*through the Governor-General of the island.*"

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ART. 8. The exchanges created or authorized by the Government, as well as those established by associations which have obtained an official character for their quotations, shall be governed by the provisions of these regulations.

Exchanges which are of a private character only shall be governed by the rules contained in the code of commerce and in the by-laws and regulations approved by the associations which established them.

ART. 9. The interior regulations of every exchange shall be drawn up by its respective board of directors, and there shall be established therein the provisions which may be convenient for the interior government and police of the same, and for the order of the meetings, as well as the rules necessary in order that the intervention of agents in contracts may be uniform. They shall also determine the books which brokers are to keep and the forms with which they are to comply. These regulations shall be submitted for the approval of the department of the interior.

CHAPTER II.—*Licensed commercial agents who take part in transactions on exchange, appointment and organization of the same, and duties intrusted to them.*

ART. 10. The intervention in negotiations and transfers of public securities and property which in accordance with the code of commerce may be quoted, can only be exercised by stock and exchange agents.

In other exchange transactions and contracts, exchange and stock agents, as well as commercial brokers, may take part.

Ship-broking interpreters can only take part in the contracts which the code specially intrusts to this kind of commercial agents.

ART. 11. Exchange and stock agents, when they act as commercial brokers, shall conform to the provisions contained in articles 106 to 110 of the code of commerce which fix the duties of said brokers.

In order to discharge the duties of ship-broking interpreters, exchange and stock brokers, as well as commercial brokers, must obtain special authorization, and must prove their knowledge of two modern foreign languages.

ART. 12. Appointments of exchange and stock agents shall only be made for commercial seats where a commercial exchange is already established or will be.

ART. 13. The proceedings on requests for appointments as commercial agents shall be instituted before the bureaus of the interior of the governments of provinces,[a] and the persons interested shall attach to the communication addressed to the governor the documents proving the requisites of article 94 of the code.[b]

The Governor-General shall forward the proceedings to the department of the interior, after hearing the board of directors of the proper association on the second case of article 94 and on the provisions contained in articles 13 and 14 of the code of commerce.

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[a] "*In the governments of provinces of the island of Cuba and in the general government of that of Porto Rico,*" according to the same article in the amended regulations.

[b] The said regulations say: "*These proceedings shall be forwarded by the general government and with their amendment to the colonial department.*"

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The certificate can not be issued to the persons interested without their first showing that they have deposited in the name of the board of directors in the depositories mentioned in article 94 of the code[a] the cash or securities which are to constitute their bond for the discharge of the office, and without taking the oath prescribed by law before the governor of the province.

After these requisites have been complied with, the board of directors shall place them in possession of their offices; shall forward an authenticated copy of the certificate, together with the certificate of possession, to the governor of the province for transmission to the department of the interior; shall announce on exchange the taking of possession, and shall authenticate it with the autograph signatures of the persons interested, forwarding them to the dependencies of the treasury and to the principal credit institutions.

In provinces where there is no board of directors, the provincial councils of agriculture, industry, and commerce shall give the information referred to in the second paragraph of this article, and shall substitute the former for all the purposes of this article.

ART. 14. In each of the towns where a commercial exchange is established the stock and exchange agents assigned to the same, no matter what their number may be, shall constitute an association.

The commercial brokers and the ship-broking interpreters, respectively, shall also constitute an association when there are five in one town.

In places where, by reason of the lack of number, no association is established, the commercial brokers and ship-broking interpreters shall come under the jurisdiction of the superior administrative authority of the province.

ART. 15. The associations of commercial agents shall be presided over by boards of directors.

The board of each association of exchange and stock agents shall be composed of one syndic president, one vice-president, and five associates, and two substitutes to take the place of the associates in case of absence or sickness.

If the number of associates is not sufficient to fill all the positions on the board, they shall constitute an association board.

In the associations of brokers and ship-broking interpreters the board shall be composed of one president, two associates, if the number of the members does not exceed 10, and four associates if said number is greater, besides one substitute.

The offices on the board are obligatory and for two years.

ART. 16. It is the duty of the boards of directors to draw up the regulations for the interior administration of each association, which must be submitted for the approval of the department of the interior.

ART. 17. The boards of directors of the associations of commercial brokers in towns where there is an exchange, shall exercise the powers corresponding to them within the corporation over which they preside, entirely independently of the exclusive authority which the board of directors of the association of stock and exchange brokers has in the exchange.

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[a] "*In the central treasury of the island, or in its branches, or in the banks authorized to receive them,*" according to the same article of the amended regulations.

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ART. 18. The boards of directors shall inform the government of all consultations addressed to them.

In cases in which the code, or these regulations, do not determine which board of directors of stock and exchange agents is to be consulted, it shall be understood that that of Madrid is the proper one.[a]

ART. 19. Commercial agents shall conform in the drafting and issue of instruments of contracts in which they take part by reason of their office to the directions which the respective boards of directors of the association to which they belong have adopted, and to the policies and documents stamped with the seal of the State, or shall incur a fine of 100 to 500 pesetas,[b] which, according to the cases, the board of directors may impose at their discretion, the amounts of said fines going to the funds of the corporation.

They shall also adopt in the entries in their registry the language and form which the board of directors of their respective association may consider most advisable.[c]

ART. 20. Only in case of the impossibility of an agent may another member of the association make transactions in the name and under the exclusive liability of the former, and previously informing the board of directors of the authorization granted.

Nevertheless, exchange and stock agents are authorized to make use of clerks who in their name and under their liability may make the entries of the transactions in the memorandum book or pamphlet, the former placing their rubric at the margin of each one.

ART. 21. The resignations from office of agents and brokers shall be submitted to the board of directors of the association to which they belong, which shall immediately accept them, informing the department of the interior, and shall proceed as prescribed in the code and in these regulations for the return of the bond, announcing it on exchange and also informing the superior administrative authority of the locality, the dependencies of the treasury, and the principal establishments of credit, to whom the appointments shall be communicated.[d]

Commercial brokers and ship-broking interpreters who do not constitute an association shall submit their resignations to the superior administrative authority.

ART. 22. Commercial brokers who, with the exception of the case provided for in the third paragraph of article 545 of the code, take part, in any manner whatsoever, in transactions which do not correspond to them in accordance with article 100 of the same, shall be deprived of their office, after proper proceedings instituted and forwarded to the department of the interior by the board of directors of the association of exchange agents, without prejudice to the civil or criminal liability which must be exacted in a proper case of said brokers.

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[a] "*That of Havana or San Juan de Puerto Rico, according as to whether the case corresponds to one or the other island,*" says the same article amended.

[b] Twenty-five to 250 pesos in Cuba and Porto Rico.

[c] This paragraph has been suppressed in the regulations amended to which we have been making reference.

[d] In the article amended the words "*to whom the appointments shall be communicated*" are omitted.

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CHAPTER III.—*Meetings on exchanges.*

ART. 23. Meetings on exchange shall be held in the building destined to the purpose, daily, with the exception of complete feast days, the Saints' days of the King, Queen, and Prince of Asturias, Holy Thursday and Friday, and national holidays.

ART. 24. The hours of meeting on exchange shall be from half past 1 to half past 3 p. m. for all kinds of transactions.

For no reason or pretext whatsoever shall the meeting be extended for a longer period.

The department of the interior, in view of the interests of commerce and hearing the board of directors, may change the business hours.

ART. 25. The opening of the meeting of the exchange shall be announced by three strokes of a bell, and the closing thereof in the same manner.

At the last stroke all the persons attending must leave the building.

ART. 26. The president of the board of directors of the association of exchange and stock agents, or the member thereof taking his place, shall adopt at the meeting of the exchange the measures which may be necessary to preserve order, and shall not permit those attending, no matter what their class and category may be, to enter with arms, canes, or umbrellas.

In a necessary case the president may order the arrest of any person causing any disorder, immediately informing the governor of the province or the superior administrative authority of the town, and placing the said person at his disposal.

ART. 27. In the meeting room of the exchange there shall be posted, and permanently affixed, a list of the names of the licensed commercial agents with their addresses.

CHAPTER IV.—*Admission of public securities, documents of credit, bonds, and securities payable to bearer in exchange transactions and their inclusion in the official quotations.*

ART. 28. In order that the public securities mentioned in No. 1 of article 68 of the code, and in the same number of the article preceding it, may be admitted to negotiation and included by the board of directors in the official quotations, there shall be required:

1. The previous declaration of the government that their circulation is authorized.

2. The publication in the *Gaceta de Madrid* of the number of certificates issued, their series and numbering, and the date they are to be publicly negotiated.

ART. 29. If the issues referred to in the foregoing article are to be circulated at different dates, the same procedure shall be observed with regard to each one, before the board of directors may permit the negotiation of the respective certificates and their inclusion in the official quotations.

ART. 30. For the admission to negotiation and inclusion in the official quotations of the public securities issued by foreign countries, there must precede—

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1. The report of the board of directors of the association of exchange agents.

2. The publication in the *Gaceta* of the conditions and circumstances of the issue and the date from which they may be the subject of public negotiation.

ART. 31. It shall be the exclusive power of the board of directors of the association of exchange agents of Madrid to grant the admission to negotiation and inclusion in the official quotations of instruments of credit and securities or bonds payable to bearer referred to in articles 69, 70, and 71 of the code and in the second part of article 30 of these regulations, in accordance with the provisions contained in the following articles.

ART. 32. The board of directors, in order to adopt a resolution of admission to negotiation and inclusion in the official quotations of the instruments, securities, or bonds payable to bearer referred to in the foregoing article, must institute at the request of the persons interested the proper proceedings, in which there shall be proven that all the formalities and conditions respectively required by articles 69, 70, and 71 of the code of commerce have been complied with.

In the case of article 70 of the code, that is, when instruments of credit issued by foreign countries payable to bearer are in question, there must be submitted in the proceedings as an essential statement the declaration of the Government that there are no reasons of public interest which are opposed to their admission to negotiation and inclusion in the official quotations.

ART. 33. In case of disagreement with the resolutions of the board of directors with regard to the admission and inclusion of public bonds in official quotations, the persons interested may appeal to the department of the interior within the period of three days. The decision of the department shall be final, and the only remedy against the same shall be by litigation.

ART. 34. After the board of directors has granted the admission and inclusion in the official quotations of the instruments of credit, securities, or bonds payable to bearer, it shall inform the department of the interior thereof.

The resolution of the board of directors shall be published by the same in the *Gaceta de Madrid*, with a summary of the circumstances and conditions of the issues and of the guaranties offered.

This announcement in the *Gaceta* shall also be for the account of the persons interested.

ART. 35. The establishments, associations, or national or foreign enterprises, and private ones which have issued instruments of credit payable to bearer, which have been admitted and included in the official quotations, shall forward to the board of directors the report they may periodically make, in accordance with their by-laws; at the proper time the lists of the amortizations they effect; and whenever requested, exact data with regard to the condition of the issues and of the payment of interest, in order that they may be consulted by the public.

The absence of these data after one month has elapsed from the time they should have been submitted to the board of directors shall be announced by the latter corporation on the board of edicts of the exchange.

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CHAPTER V.—*Exchange transactions.*

SECTION FIRST.—*Intervention of exchange agents in exchange transactions.*

ART. 36. It is the principal duty of licensed exchange agents to take part in the negotiation and transfer of all kinds of public securities which can be quoted, defined in article 68 of the code of commerce.

They may furthermore take part, in concurrence with commercial brokers, in all other exchange transactions and contracts, subjecting themselves to the liabilities proper to these negotiations.

ART. 37. An exchange agent who has been requested to take part in a negotiation can not refuse to do so, but he shall be entitled to demand of the principal the guaranties he may consider necessary for the security of the negotiation during the time the latter is pending.

In the case of article 322 of the code of commerce, the deposit of certificates for the guaranty of loans may be made in the Spanish Bank or its branches or in the general depository.[a]

ART. 38. It is the duty of an exchange agent who may have taken part in a transaction which is to be quoted to see that it is immediately published, in accordance with article 78 of the code of commerce, for which purpose he shall make a signed memorandum which he shall deliver to the announcer, who, after reading it to the public aloud, shall turn it over to the board of directors.

In case the transactions should have taken place outside of the building of the exchange, the agent who may have taken part therein shall take care under his liability that the publication be made at the opening of the meeting of the exchange of the same day, or at the opening of the meeting of the next day if the transactions should have taken place after the official business hours.

ART. 39. In negotiations in which agents take part they shall strictly conform to the rates of exchange, the board of directors exercising the most careful vigilance on this point, which shall decide with its authority the difficulties which may arise.

ART. 40. In the negotiation of bonds payable to bearer which can be quoted on exchange the licensed agent who is the vendor thereof shall deliver a memorandum of their numbers to the purchaser, and shall demand of the latter another memorandum with the name of the person in whose favor the transfer is to take place.

In order that said transfer may take place the documents representing the securities which have been the object of the transaction shall be delivered before twenty-four hours have elapsed, in the proper office, stating the name of the assignee and the other necessary details.

ART. 41. The request for the paper negotiated on time and at the will of the purchaser must be made, unless there is an agreement to the contrary, before the last half hour of the official meeting of the exchange, the transaction being thereby considered as lapsed and shall be liquidated the following day.

ART. 42. The statements of options in transactions which include this condition, must be made to the contracting party, or in his absence they shall be brought to the attention of the board of directors at the

[a] The article amended states, instead of bank, etc., "*Spanish Bank of the island of Cuba, in its branches or in the Treasuries, according to the island in which the deposit is to be made.*"

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proper time until one-half hour before the closing of the exchange on the day the contract lapses.

ART. 43. The board of directors shall provide the tardy agent with the proper certificate when it appears from the papers presented that his delay was due to the nonfulfillment of his principal, in order that he may in his turn bring an action against the latter, according to the provisions of articles 77 and 103 of the code.

SECTION SECOND.—*Duties of the board of directors of exchange agents.*

ART. 44. The following are the duties of boards of directors of exchange agents, representing the exchanges and intrusted with their management and government:

The publication of the transactions.

To draw up the records of quotations.

To fix the rates of the same.

To publish the exchange bulletin.

To discharge the work of liquidation.

In the discharge of these duties the board of directors shall conform to the provisions of the following articles:

ART. 45. For the publication of the transactions, the board of directors shall decide the form and model of the memoranda which are to be made for said purpose, including all the cases of the different transactions authorized by article 75 of the code of commerce.

ART. 46. In the office of the board of directors there shall be kept in packages, arranged by days, the memoranda published, in order that they may be consulted whenever necessary.

A statement of the transactions published, mentioning the number of each kinds of securities negotiated, for cash as well as on time, shall be forwarded daily to the Department of the Interior.[a]

ART. 47. The announcer shall conform exclusively to the orders of the board of directors, and any malicious change he may make in the publication of transactions shall be punished by suspension from office and salary, without prejudice to his removal and the other liabilities which may be proper.

ART. 48. In accordance with article 80 of the code, the board of directors is the authority intrusted with drawing up the record of the quotations in view of the memoranda published and the data furnished by the agents who take part in transactions.

The record of quotations shall state clearly—

1. The successive movement which the public securities and industrial or commercial bonds may have had rising and falling, from the beginning to the end of the negotiations of each class, and the circumstances and conditions under which they took place.

2. The maximum and minimum price of the other contracts designated as proper subjects of negotiations on exchange by article 67 of the code, the rate of discount of drafts, and the exchange on bills of exchange and loans.

The record of quotations may also include, when decided by the board of directors, the rate of discount received by licensed exchange

[a] According to the same article of the amended regulations, the statement is to be sent to the general government of the island in which the exchange is situated, which authority shall forward it every ten days to the colonial department.

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agents, that of interest or coupons due or about to become due, and certificates of securities taken up by amortization which can be quoted on exchange.

The quotation of all kinds of national bonds shall be made and published in accordance with the decimal system.

ART. 49. The association of commercial brokers in towns where there is an exchange shall forward daily to the board of directors of the association of exchange agents a memorandum of the current exchanges and of the prices of merchandise in order that, together with the other data determined in article 80 of the code, the record of the official quotations may be drafted.

ART. 50. The record of quotations shall be authenticated with the signature of the syndic president or of the person acting in his stead, and of two members of the board of directors; and those corresponding to each year shall be entered in a bound and folioed registry, on the pages of which the seal of the corporation shall be affixed daily.

An authenticated copy of this original shall be issued to be forwarded daily to the commercial registry in accordance with article 80 of the code, and the same shall serve for the publication of the quotation bulletin.

ART. 51. The board of directors only may publish the exchange quotation bulletin, which shall be done after the memorandum referred to in article 48 of these regulations has been made.

No private person or corporation is allowed to publish a quotation bulletin different from that drafted by the board of directors.

ART. 52. Immediately upon the publication of the bulletin the board of directors shall affix a copy thereof on the board of edicts of the exchange.

It shall announce to the public in a similar manner the telegrams relating to the exchange quotations of national and foreign exchange immediately upon their receipt.

The departments of the treasury and interior[a] shall do what may be necessary in order that the telegrams relating to exchanges which may be received are true statements of the quotations, and in order that they may be communicated as soon as possible directly to the board of directors.

ART. 53. Said board shall also forward a copy of the bulletin of the quotations to the colegislative bodies, to all the departments, to the general offices of the treasury, of the public debt, and those of agriculture, industry, and commerce, to the superior administrative authority of the locality, commissions of the treasury of Spain abroad, *Gaceta de Madrid*, to the boards of directors of the other exchanges of the country, and to any other dependency of the State which may be designated by the department of the interior.[b]

ART. 54. In accordance with the second paragraph of article 105 of the code, the board of directors shall fix the rate of transactions on time with the obligation of delivering securities at the closing of

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[a] "*The Governors-General*," according to the amended regulations.

[b] The text of the same article, amended for Cuba and Porto Rico, is as follows:

"ART. 53. Said board shall also forward a copy of the bulletin of quotations to the general government, to the general intendance of the treasury, to the *Gaceta* of the island, to the treasury commissions from abroad, to the boards of directors of the other exchanges of the nation, to the administrative authority of the province, and to the colonial department."

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exchange on the last day of the month, taking as a basis the average of the quotation for the same day.

The daily average prices of transactions and quotations on time with the obligation of delivering securities shall be the regulating one, in order to adjust the differences in transactions of a similar character in which said obligation is not stipulated.

If on the due date of these transactions none should have taken place with the obligation of delivering securities, the rate on the nearest exchange at a prior meeting where there may have been any shall serve for their liquidation.

ART. 55. The board of directors shall adopt the form it may consider most advisable to make the general liquidation of the month, instrusted to the same by article 105 of the code, of the transactions on time in which licensed exchange agents have taken part, and the measures necessary in order that the partial liquidations may be delivered to the same on the day following the date they fall due, and so that the general liquidation may be concluded on the third working day thereafter.

Private persons who have transactions through licensed exchange agents may present in their name the proper liquidation to the board of directors.

ART. 56. In order that agents may avoid the effects of their civil liability for the certificates or bonds they may negotiate after the board of directors may have published on exchange the denunciation of their illegal origin, according to article 104 of the code, they shall be obliged to consult the original complaints which may have been presented to said corporation.

For this purpose, besides the proper arrangement of these denunciations in packages, and for the purpose of making their examination easier, the board of directors shall have a guidebook in which the numbers and series of the securities denounced shall be entered according to the securities, as well as the names and surnames of the complainants, date of the publication of the complaint, and of the annulment of the advertisement or of its confirmation by the court taking cognizance of the question.

This book shall only serve as an auxiliary to determine the original denunciations, from which the agents shall take the memoranda they may consider advisable for their security.

ART. 57. The complaints by reason of theft, robbery, or loss of securities which can be quoted, which are addressed to the board of directors of the association of exchange and stock agents in the manner prescribed in articles 559 and 565 of the code, shall be drafted and signed in duplicate on the forms which said corporation may adopt for proper uniformity.

ART. 58. The telegrams which authorities may address to the board of directors by reason of the robbery, theft, or loss of securities which can be quoted, shall be published also in the exchange in the manner in which they are drafted, for the same purposes as those mentioned in articles 560 and 561 of the code.

ART. 59. The notice of the complaint by the board of directors to those of the same kind in the country which is prescribed by article 559 of the code of commerce shall be communicated by telegraph if possible, and in all cases by means of the first mail.

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ART. 60. Errors in the numbering, series, and classes of securities denounced are imputable to the complainants for the purposes of article 569 of the code, and shall be corrected as soon as observed by making a new publication of the complaint on the exchange, and at the expense of the complainant in the official newspapers.

CHAPTER VI.—*Bonds of agents.*

ART. 61. The licensed exchange and stock agents shall constitute, as a guaranty of the discharge of their office a bond in cash or public securities computed at the average quotation of the last exchange day of the months of July and December.

The public securities in which this bond may be constituted shall be those issued directly by the State, or with a subsidiary guaranty of the nation.

The bond shall be deposited in the name of the board of directors, this corporation issuing the proper receipt to the person interested.

The bond to be given by exchange or stock agents shall be of:

Fifty thousand pesetas in the towns of Madrid, Barcelona, Valencia, Santander, and Bilbao.

Thirty thousand pesetas in those of Malaga, Sevilla, Cadiz, Coruña, Tarragona, Alicante, Palma de Mallorca, San Sebastian, Valladolid, and Zaragoza.

And fifteen thousand pesetas in any other town in which commercial exchanges are established.[a]

ART. 62. The bond of stock and exchange agents shall be exclusively liable for the transactions they may make as such. Only in the case the agent does not possess other property, can the said bond be attached for liabilities not proper to the office; but they shall not be effective until after six months from the time said agent discontinues in the exercise of his profession, and only with regard to that part of the bond which may have remained exempt from the liabilities of the office to which it was subject.

For this purpose the board of directors, as soon as notified that the agent has consented to the decree of auction in executions brought for private debts not connected with his office or the final judgment, shall suspend him from the discharge of his duties until within the following twenty days he replaces in his bond the amount demanded in accordance with article 98 of the code.

If the bond should be made up the board of directors shall place at the disposal of the court the amount which may be demanded, and the suspension of the agent shall be raised.

Should this not be done, the latter shall in fact be removed from office, and the period of six months shall begin to be counted for the preference in the claims against the bond for obligations to which the same is specially liable.

ART. 63. In case the agent does not comply with the obligations he may have contracted in the discharge of his office, the board of directors, in accordance with the provisions contained in articles 77 and 98 of the code, shall realize the amount of the bond of the former which

[a] Fifteen thousand pesos in the town of Havana, 10,000 in that of San Juan de Puerto Rico, and 5,000 in other towns of Cuba and Porto Rico in which commercial exchanges exist or are to be established.

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may be necessary to meet the proper claims, provided the person prejudiced desires the fulfillment of the transaction.

ART. 64. The amounts for which the bond is liable shall be covered, when the latter does not consist of cash, with the proceeds of the sale of the public securities in which it was constituted.

ART. 65. Commercial brokers shall constitute as security for a faithful discharge of their office a bond in cash or in public securities appraised in the manner provided in article 61 of these regulations, in accordance with the following scale:

Of 5,000 pesetas in the towns of Madrid, Barcelona, Valencia, Santander, and Bilbao;

Of 3,750 pesetas in those of Malaga, Seville, Cadiz, Coruña, Tarragona, Alicante, Palma de Mallorca, San Sebastian, Valladolid, and Zaragoza;

And of 2,500 pesetas in other towns of the Kingdom.[a]

ART. 66. Ship-broking interpreters shall constitute a bond equivalent to one-half that fixed for commercial brokers in the foregoing article in the respective maritime towns.

ART. 67. The return of the bond of commercial agents in the three cases of resignation, removal from office, and death shall be announced on the board of the exchange, in the *Gaceta de Madrid*, and in the official bulletin of the provinces, the period of six months being fixed, in accordance with articles 98 and 946 of the code, in order that the proper claims may be made before the courts.

After this period has elapsed without any claim having been brought against the bond in due form, the board of directors shall return the same to the persons interested, or to their legal representatives, after it is proven that they have deposited their books in the commercial registry, as prescribed in article 99 of the code.

The governor of the province shall proceed in the same manner for the return of the bond given in his name by brokers and ship-broking interpreters who do not form an association.

CHAPTER VII.—*Schedules.*

ART. 68. Licensed exchange agents shall conform in the collection of their fees for intervention in contracts and transactions which the code intrusts to them to the following:

SCHEDULE OF FEES FOR LICENSED EXCHANGE AND STOCK AGENTS.

1. In negotiations, transfers, credit accounts with security and subscriptions to issues of all kinds of public securities, in which they take part exclusively by reason of their office, and in secured loans of these securities, two per 1,000[b] on the cash to be collected to be paid in equal parts by the contracting parties.

2. In other transactions, instruments, or contracts in which they take part together with commercial brokers, the fees fixed for the latter in their schedule.

These fees shall be earned by the agents even in case the transaction is not consummated on account of the fault of the contracting parties,

[a] Of 2,000 pesos in the town of Havana, 1,500 in that of San Juan de Puerto Rico, and 1,000 in other towns in the islands of Cuba and Puerto Rico.

[b] Three per 1,000 in Cuba and Porto Rico.

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and when the latter is concluded they shall be paid at the time of liquidating the transaction, with the exception of what is prescribed with regard to negotiations on time.

3. For the certificates they may issue with reference to transactions which appear in their registry, 10 pesetas,[a] provided the instrument does not include more than two entries, and if more than this number, 5 pesetas for each one.

4. In searching for transactions in their registry, ordered by the courts or authorities, 10 pesetas[b] for the examination of the entries for each month.

ART. 69. Without prejudice to what may be definitely established with regard to fees of boards of directors, that of the association of agents of Madrid shall continue to collect those it earns at present in accordance with the customs established.[c]

ART. 70. Commercial brokers shall earn in negotiations and contracts in which they take part by reason of their office the fees fixed in the following:

SCHEDULE OF FEES FOR COMMERCIAL BROKERS.

1. In negotiations of industrial and commercial securities, metals, and merchandise, 2 per 1,000[d] on their cash value, to be paid in equal parts by the contracting parties.

2. In bills of exchange, drafts, promissory notes, and discounts, 2 per 1,000[d] on their cash value, to be paid in equal parts by the contracting parties.

3. For their attendance at auctions of drafts or other commercial securities where they do not obtain the award, 50 pesetas to be collected from their principal.[e]

If he has received the award, he shall collect 10 per 1,000[f] on the cash and half from each contracting party.

4. In land insurance, 10 per 100 on the amount of the premium charged the insured.

5. For certifications of exchanges, accounts, redrafts, 1 per 1,000 collected from the drawer.

6. For the search for transactions and certificates which they may issue with reference to the entries in their registry, the fees fixed for the same work for exchange agents in their respective schedule.

ART. 71. Ship-broking interpreters shall earn, in contracts in which they take part by reason of their office and for the services they may render, the fees fixed in the following:

SCHEDULE OF FEES FOR SHIP-BROKING INTERPRETERS.

1. In marine insurances 8 per 100 on the amount of the premium, to be collected from the underwriter.

2. In charters of vessels 4 per 100 on the amount of the charters, to be collected from the captain or from the charterer.

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[a] Four pesos in Cuba and Porto Rico.

[b] Four pesos.

[c] The same article amended says:

"ART. 69. The fees of the boards of directors shall be established by the same after approval of the governor-general."

[d] 3 per 1,000 in Cuba and Porto Rico.

[e] 15 pesos in Cuba and Porto Rico.

[f] 1 per 100.

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3. In loans on bottomry or respondentia 1 per 1,000 on the amount of the principal loaned, to be paid in equal parts by the maker and recipient of the loan.

4. For the work referred to in number 2 of article 113, they shall earn, if the time consumed by the ship-broking interpreter does not exceed one hour, 10 pesetas.[a]

For every fifteen minutes over said time, 2 pesetas and 50 céntimos.[b]

5. For the translation of the instruments referred to in No. 3 of the said article, they shall earn for every 24 lines, including the last one, even though there may not be this number if the translation is made from French, Italian, or Portuguese, 5 pesetas; if made from English or German, 10 pesetas, and from any other language, 12 pesetas.[c]

TRANSITORY PROVISIONS.

1. The present employees of exchanges whose offices are to continue in accordance with the new code, shall be confirmed therein, the vacancies which may occur in the future being filled in accordance with the laws and regulations which are to govern for their class.

2. The present commercial brokers may acquire the title of exchange agents by simply making up the bond.

Approved by Her Majesty:

MANUEL ALONSO MARTINEZ.

MADRID, *December 31, 1885.*

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[a] In Cuba and Porto Rico, 4 pesos.

[b] One-half peso in Cuba and Porto Rico.

[c] In Cuba and Porto Rico if the translation is made from French, English, Italian, or Portuguese, 1½ pesos; if from the German, 3 pesos, and if from any other language, 3½ pesos.

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APPENDICES.

APPENDIX I.

ROYAL DECREE OF JANUARY 28, 1886, EXTENDING TO THE ISLANDS OF CUBA AND PORTO RICO THE CODE IN FORCE IN THE PENINSULA, WITH THE AMENDMENTS INDICATED.

On the recommendation of the colonial secretary, after hearing the codification commission of said provinces, in accordance with the council of secretaries and making use of the authorization granted my Government by article 89 of the constitution of the Monarchy, I decree the following:

ARTICLE 1. The code of commerce of August 22, 1885, in force in the Peninsula shall be in force in the territories under the jurisdiction of Cuba and Porto Rico, without other amendments than those introduced in articles 179, 201, 453, 547, 550, 559, 798, 804, 934, and 940, which shall be substituted by the following:

[We omit their insertion, because we have already reproduced them in the proper place, that is, immediately after the text of the respective article of the code for the Peninsula.]

ART. 2. The associations in existence on April 30, 1886, must make use of the right granted them by article 159 of the code of commerce, by means of a resolution adopted at a general extraordinary meeting expressly called in accordance with their by-laws, and in a proper case in accordance with the law of January 21, 1870, which is declared applicable to the islands of Cuba and Porto Rico.

These resolutions must be inserted in the *Gaceta de la Habana* or in that of San Juan de Puerto Rico, according to the island in which the associations are established, and a copy thereof be presented in the commercial registry.

ART. 3. The government shall issue, before the day on which the new code goes into operation in the islands of Cuba and Porto Rico, the proper regulations for the organization and government of the commercial registry and of the commercial exchanges and the transitory provisions which may be necessary.

ART. 4. The Cortes shall be informed of this decree.

Given at the Palace on January 28, 1886.

MARIA CRISTINA.

GERMAN GAMAZO,
Colonial Secretary.

APPENDIX II.

ROYAL DECREE OF AUGUST 6, 1888, EXTENDING THE CODE OF COMMERCE IN FORCE IN THE PENINSULA TO THE PHILIPPINES, WITH THE MODIFICATIONS INDICATED.

(Omitted.)

APPENDIX III.

FORM OF LAW AMENDING SEVERAL ARTICLES OF THE CODE OF COMMERCE WITH RELATION TO THE SUSPENSION OF PAYMENTS AND BANKRUPTCIES.

DEPARTMENT OF GRACE AND JUSTICE.

Royal decree.

In the name of my August Son the King Don Alfonso XIII, and as Queen Regent of the Realm:

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In accordance with the council of secretaries,
I hereby authorize the secretary of grace and justice to submit to the Cortes a form of law amending articles of the code of commerce and of the law of civil procedure and establishing new provisions with regard to suspension of payments and bankruptcies.

Given at the Palace on April 25, 1892.

MARIA CRISTINA.

FERNANDO COS GAYON,
Secretary of Grace and Justice.

FORM OF LAW.

TITLE FIRST.—AMENDMENT OF THE CODE OF COMMERCE IN REGARD TO THE SUSPENSION OF PAYMENTS AND BANKRUPTCIES.

First and last article. Articles 21, 46, 870, 871, 872, 873, 875, 876, 877, 878, 889, 893, 896, 909, and 921 of the code of commerce shall be drafted as follows:

ART. 21. On the sheet of the record of each merchant or association there shall be entered:

1. Name, firm name, or title.
2. The kind of commerce or transactions engaged in.
3. The date on which business is to begin or was begun.
4. The domicile, with a statement of the branches which may have been established, without prejudice to recording the branches in the registry of the province in which they are domiciled.
5. The articles constituting a commercial association, whatever may be its object or appellation, as well as instruments modifying, rescinding, or dissolving the said association.
6. General powers of attorney and revocation of the same, should there be any, given to managing partners, factors, employees, and any other agents.
7. The authorization of the husband for his wife to trade, and the legal or judicial authority of the wife to administer her property on account of the absence or incapacity of the husband.
8. The revocation of the permission granted the wife to trade.
9. Dowry instruments, marriage agreements, and the deeds which prove the ownership of the personal property in addition to the dowry of the wives of merchants.
10. The issues of shares, certificates, and obligations of railroads and of all kinds of associations, be they of public works, credit, or others, stating the series and number of the certificates of each issue, their interest, revenue, amortization, and premium, should they have either, the total amount of the issue, and the property, works, rights, or mortgages, should there be any, which are liable for their payment.

There shall also be recorded in accordance with the provisions of the foregoing paragraph, the issues made by private parties.

11. The issues of bank notes, stating the date, class, series, quantity, and value of each issue.
12. The certificates of industrial property, patents, and trade-marks, in the form and manner established by law.

Foreign associations which desire to establish themselves or create branches in Spain shall present and have recorded in the registry, besides their statutes and the documents prescribed for the Spanish ones, the certificate issued by the Spanish consul stating that said companies have been established and authorized according to the laws of the respective country.

13. The decisions declaring suspension of payments, bankruptcy, or the discharge of the bankrupt and the settlements made in the proceedings of suspension of payments or of bankruptcy.

If the merchant or association should not be recorded, the proper entry shall be officially made in order that the provisions of this paragraph may be carried out.

ART. 46. Neither can the general communication, delivery, or inspection of the books, correspondence, and other documents of merchants be decreed at the instance of a party, except in cases of liquidation, universal heirship, bankruptcy, or suspension of payments.

ART. 870. A merchant who, possessing sufficient property to cover all his debts, foresees the impossibility of doing so when they respectively fall due, may suspend payment, which shall be declared by the judge of first instance of his domicile in view of his declaration.

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ART. 871. A merchant who possesses sufficient property to cover all his liabilities may also suspend payments within forty-eight hours following the falling due of an obligation which he may not have met.

ART. 872. A merchant who desires to suspend payments must attach to his petition the proposal of the extension he requests of his creditors. If in any manner whatsoever a discharge or reduction of the credits is desired the judge shall refuse to hear the petition for suspension of payments.

ART. 873. The proceedings for the suspension of payments shall conform to the provisions indicated in title 2 of this law. If the extension should be refused by the board the proceedings shall be concluded.

The provisions of articles 870 to 873 shall be applicable to the suspension of payments of general and limited copartnerships.

ART. 875. The declaration of bankruptcy shall be proper:

1. When the bankrupt requests it in person.
2. On a well-based request of a legitimate creditor.
3. Officially in the cases determined in the code, and especially when the flight of the merchant is well known.

ART. 876. It is the obligation of every merchant who is in a state of bankruptcy to inform the judge of first instance of his domicile within the three days following that on which he ceased to meet his current obligations.

For the declaration of bankruptcy at the instance of a creditor it shall be necessary that the request be based on a title by virtue of which an execution or writ of attachment was issued and that the result of the attachment should not be sufficient to cover the payment.

The declaration of bankruptcy at the instance of creditors shall also be proper, who, although they have not obtained a writ of attachment, prove their credits and that the merchant has generally defaulted in the payment of his current obligations, or that he has not complied with the agreement made at the time of suspending payments.

ART. 877. In case of the flight or concealment of a merchant, together with the closing of his offices, warehouses, or dependencies, without having left any person to manage his business for him and to meet his obligations, for the declaration of bankruptcy at the instance of creditors it shall be sufficient that the latter prove their title and said facts by means of a statement, which may be presented to the judge.

The judges in cases of well-known flight, or of which they have authentic information, shall officially make the declaration of bankruptcy and shall take the steps required for the occupation and care of the establishments of the fugitive, until the creditors make use of their right.

The provisions contained in this article shall be understood without prejudice to the proper resolutions in case of absconding or other crime defined in the penal code.

ART. 878. After the bankruptcy has been declared, the bankrupt shall be disqualified to administer his property.

All his acts of ownership and administration subsequent to the period to which the effects of the bankruptcy retroact shall be null.

After the examination of the credits against the bankruptcy has been concluded the creditors may order the immediate realization of all the property of the assets, the amount of which shall be deposited in the proper establishment, from which it can not be removed except by virtue of an order from the judge taking cognizance of the matter, countersigned by the judge of first instance, and with the intervention of the court clerk.

The realization of the assets in the manner mentioned shall not affect the rights of the creditors, nor the said graduations of the credits, nor the resolutions or settlements which the creditors may agree to at the proper time.

The rents due the owner from the time of the declaration of bankruptcy shall be considered as indispensable expenses, to be charged to the assets, and shall be paid every month in advance, or in the manner which the former may have agreed upon, the dispossession, if proper, being served on the receivers of the bankruptcy.

The department of public prosecution must be represented in all bankruptcies from the time of the decree declaring the same up to the conclusion of the suit, being obliged to request all that may be proper to secure the regularity of the procedure and the prosecution of punishable acts.

ART. 889. The following shall also be considered culpable bankrupts in law, reserving the exceptions they may propose and prove in order to prove the innocence of the bankruptcy:

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1. Those who have not kept their books of accounts in the manner and with all the essential and indispensable requisites prescribed in title 3 of Book I, and those who, even though they keep said books with all these conditions, should have made errors in the same which may have caused injury to a third person.

2. Those who have not made their statement of bankruptcy in the period and manner prescribed in article 871.

3. Those who, having absented themselves at the time of the declaration of the bankruptcy or during the progress of the suit, should not appear in person in the cases in which the law requires it of them, unless there is a legitimate obstacle.

4. Those who may not have complied with the settlements agreed upon in the proceedings of suspension of payments, unless the new bankruptcy is such that it can be declared fraudulent.

ART. 893. Accomplices in fraudulent bankruptcies shall be considered—

1. Those who assist in the removal of property of the bankrupt.

2. Those who having conspired with the bankrupt to suppose credits against him, or to increase the amount of those they may actually have against securities or property, and who sustain this supposition in the proceedings of examination or classification of the credits, or at any meeting of creditors of the bankruptcy.

3. Those who, in order to place themselves in preference to others to the prejudice of other creditors, by consent of the bankrupt, alter the nature or the date of the credit, even though this should be done before the declaration of bankruptcy.

4. Those who, deliberately and after the bankrupt suspended payments, should assist him in hiding or removing a portion of his property or credits.

5. Those who, being the holders of any property of the bankrupt at the time of making known the declaration of bankruptcy by the judge or court taking cognizance thereof, deliver it to the former and not to the legitimate administrators of the assets, unless, being a nation or province different from that of the domicile of the bankrupt, they prove that in the town of their residence the bankruptcy was unknown.

6. Those who refuse to deliver to the administrators of the bankruptcy the goods belonging to the bankrupt which may be in their possession.

7. Those who, after the publication of the bankruptcy, should admit indorsements of the bankrupt.

8. The legitimate creditors who, to the prejudice and in fraud of the assets, should make private or secret agreements with the bankrupt.

9. The agents who take part in a transaction of traffic or drafts which the merchant who has been declared bankrupt should make.

ART. 896. No action shall be brought for culpable or criminal bankruptcy before the judge has made the declaration of bankruptcy and that there is cause, by virtue thereof, to proceed criminally. The cases referred to in the third paragraph of article 877 are excepted.

ART. 909. There shall be considered as included in the provisions of the foregoing article, for the purposes indicated therein—

1. The unappraised and appraised dowry property which may remain in the possession of the husband if its receipt appears in a public instrument recorded in accordance with articles 21 and 27 of this code.

2. The paraphernal property which the wife may have acquired by reason of inheritance, legacy, or gift, either in the manner in which it was received, or if it has been subrogated or inverted in other property, provided the inversion or subrogation was recorded in the commercial registry in accordance with the provisions contained in the articles cited in the foregoing number.

3. The property and goods the bankrupt may have on deposit, under administration, leased, rented, or of which he enjoys the usufruct.

4. The merchandise the bankrupt may have in his possession ordered to be sold, purchased, transferred, or delivered.

5. The drafts or promissory notes which, without indorsement or any statement which transfers their ownership, should have been sent the bankrupt for collection, and those he may have gained possession of for the account of another, drawn or indorsed directly in favor of the principal.

6. The moneys forwarded outside of account current to the bankrupt, for delivery to a determined person in the name and for the account of the principal, or to satisfy obligations which are to be met in the domicile of the former.

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7. The amounts which are owed the bankrupt by reason of sales made for the account of another, and the drafts or promissory notes of the same character which are in his possession, even though they are not drawn in favor of the owner of the merchandise sold, provided it is proven that the obligation arises therefrom and that they were in the possession of the bankrupt for the account of the owner in order to be cashed and the amounts thereof to be forwarded at the proper time, which shall be legally presumed if the amount should not have been entered on account current between both.

8. The goods sold to the bankrupt for cash, the price of which has not been paid at all or only in part, while they remained packed in the warehouses of the bankrupt, or in the manner in which the delivery was made, and when they are in such condition as to be specifically distinguished by the marks and numbers of the packages or bales.

9. The merchandise which the bankrupt may have purchased on credit, until the material delivery of the same has been made to him in his warehouses or in a place agreed upon, and that the bills of lading or shipping receipts of which may have been forwarded to him, after being shipped, by order and for the account and risk of the purchaser.

In the cases of this number and of No. 8, the receiver of the bankruptcy may retain the goods purchased or demand them for the assets, paying the price thereof to the vendor.

ART. 921. The bankrupts not included in the foregoing article may obtain their discharge by proving that they have fully complied with the approved settlement they may have made with their creditors.

Should there have been no settlement, they shall be obliged to prove that all the obligations acknowledged in the bankruptcy proceedings were liquidated with the assets of the same or through subsequent payments.

The department of public prosecution shall be represented in the proceedings for discharge.

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TRANSLATION OF THE MORTGAGE LAW FOR CUBA, PORTO RICO, AND THE PHILIPPINE ISLANDS.

(1893.)

1179

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MORTGAGE LAW FOR CUBA, PORTO RICO, AND THE PHILIPPINE ISLANDS.

TO THE CORTES.

The mortgage law, which has been in force in the Peninsula for the past thirty years, was applied to the Antilles, with such changes as were indispensable for its adaptation to those islands, on May 1, 1880, and to the Philippine Islands on December 1, 1889, reforming the laws regarding real property in those countries, and consequently giving a new impetus to land securities. Although this work is not without its imperfections, being human, the mortgage law must be looked upon as one of our most important legal works, and all that is fundamental therein, and even that which appears of less value, should be religiously respected as long as the results of experience and the necessity of reconciling it with the other legal measures in force permit its observance. This has been the rule adhered to by the Government in the preparation of the revision herewith submitted to the Cortes.

The Civil Code for the Colonies as well as for the Peninsula, among other special laws, left the mortgage law expressly in force, without eliminating from it, or diverting from itself entirely, provisions which by their nature would have corresponded to the Code had both originated at the same period. It was an inevitable necessity, therefore, to overcome the differences, and in the revision which took place with this object in view, it was concluded that the Code should prevail whenever a question arose, and not only support the structure of the mortgage law, but that said law should be the only one for all ultramarine provinces; and, further, that it should coincide, as far as possible, with the text of the Peninsular law, thus avoiding the confusion and practical difficulties which were noted in the quotations and references by reason of four different sets of numbers for the articles.

The necessity of harmonizing these differences between the law mentioned and the code is not the only motive which animates the government in presenting this plan. Experience and the especial conditions of real property in some of the ultramarine provinces also urgently suggest, and even demand, important amendments, which naturally, however, should retain the cardinal principles of the system.

The law having been enacted so that all real property should be recorded in authentic official books, it was at once observed that a considerable portion was not subjected to this beneficent rule, by which it could be freed from usury and its possession guaranteed. The taxes, the schedule of notarial and register's fees, and the compli-

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cations as well as the requirements of form, made this object of the legislator unattainable. It was necessary to remove these obstacles, so that small properties could enjoy the advantages of credit. Furthermore, the omission of the record of deeds keeps from the registry a considerable portion of land, and as this evil can only be remedied by notices of possession, it is advisable to still further facilitate them, notwithstanding the undesirable features thereof, by permitting their conversion into absolute titles twenty years after their date. These two reforms have already been fully discussed by the Senate, and were approved in 1890, in order to incorporate them in the Peninsular law.

At that time another reform was also considered which had been urgently demanded. The old books of property, which were to be replaced by those created by the mortgage law, contained a multitude of liens and claims which had absolutely expired, but had not been canceled in a definite manner, thus depreciating the value of property without reason.

It was an urgent requisite of credit to declare those books without force as to third persons after a certain period, and it was therefore proposed that all persons who had any interest recorded in the same should transfer them to the new books if they desired the State to force third persons to respect them. By reenforcing this provision in giving greater scope to proceedings for clearing the title, the certificate of a register will indicate the legal status of the realty, thus giving contracts the security which they should enjoy.

But where the voice of experience has been heard with the greatest clamor against the law, demanding immediate relief, is where it refers to the procedure for making mortgage debts effective. Its crushing confusion, the uncertainty of results, and its incalculable cost restrain capital or suggest usurious conditions; sales and resales take the place of loans, with the object of avoiding all proceedings to the prejudice of the landowner; interest is stipulated which triplicates the capital loaned, and perhaps by the employment of other means the debtor is exposed to penal responsibility, converting the sanctity of laws enacted for the punishment of crimes into a vile instrument of avarice against the unfortunate. Distrust causes these means to be employed because the legal procedure does not satisfy the reasonable requisites of contracts, and to uproot these evils, to furnish land with the capital it needs and to give the lender assurances of speedy and easy recovery of his loans, is the object of the most important reform proposed by the Government, suppressing proceedings which, without positively guaranteeing one's rights, destroy those most sacred. Previous appraisement, uniformity of judicial action in all necessary investigations, suppression of all litigaton, only one summons and the immediate sale by auction, are the basis of the new law. We have abolished suits, exemptions, letters requisitorial (exhortos), writs of attachment on the mortgaged property, proceedings in the nature of a demurrer, simultaneous auctions, and a great many other barriers in the path of the credit of realty, which had been placed with the best of intentions, but from which those in good faith were the only victims.

The special conditions existing in the ultramarine provinces have suggested other amendments, especially for the Island of Cuba. The reforms mentioned, equally useful for Porto Rico and the Philip-

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pines, have been proposed in accordance with the crisis which is complained of with regard to the development of their credit on real property, but all of them would be worthless without the enactment of a measure which has been unanimously and most justly demanded, and which will in itself promote credit and prevent the repetition of the statement that in Cuba there as yet exist no mortgage regulations. This measure consists in abolishing the time, which has been indefinitely extended by royal decree of May 6, 1882, during which mortgages as well as other implied liens remain in force; these secret incumbrances, which do not appear in the registry, rendering all contracts involving realty hazardous, although they appear completely unencumbered according to the record. The time which was just and reasonable during a period of transition, and which was allowed in the Peninsula, Porto Rico, and the Philippines, has already lapsed, while it is still running in Cuba, and has been for the past thirteen years, placing all parties to contracts in a state of uncertainty and causing them to be suspicious. The new law will fix a time for its termination, which will not be extended.

Credit of land requires more. On account of the provisions of articles 73 to 78 of the Cuban mortgage law loans are now reduced to 50 per cent of the value of estates, said articles reserving the other half for the security of subsequent lenders, who may wish to aid the cultivation and production of the soil. These articles place such obstacles and difficulties in the way of such loans, incorrectly called "agricultural loans" (refaccionarios), that, according to all information, the privilege is not made use of in practice, and in point of fact this compensation for the evil suffered by mortgage contract is lacking. To reestablish credit of lands to its fullest extent by the abolition of these articles is to comply with a legitimate demand of Cuban land owners whom it is intended to protect.

The law fills another requisite. To facilitate the acquisition on time payments of machines and other agricultural implements it is necessary that the simple attachment to the soil of an article sold, when the vendor has not yet been fully paid, should not turn it over to the mercy of prior mortgage creditors, inasmuch as subsequent acquisitions of the debtor are not security for the fulfillment of their contracts. The provisions of paragraph 2 of article 112 of the new law correct this fault, which was a great impediment in the way of a perfect and strong reestablishment of Cuban industries.

Two other reforms which are demanded by that island have no appropriate place in the mortgage law, and will, therefore, have to be otherwise disposed of, viz, loans which are secured only by the products and the survey of estates owned by tenants in common. This law, embracing real property only, can not be applied to products when considered apart from the soil itself; agricultural credit can not be considered as embraced by a credit of the land. The survey of estates of tenants in common is in that island a question of as great difficulty in its social aspect as the question of emphyteusis in Galicia, and pertains to the Civil Code and the Code of Procedure, and not to a law which presupposes and requires that the property already is surveyed to give publicity and permanent stability to its legal situation.

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An attempt was made some time ago to apply the registry system known by the name of "Acta Torrens" to the Philippines, but the confusion which would attend a radical change of system within four years of the establishment of the present one, and when the last quarterly statistics show that it is becoming customary and generalized, and together with an examination of the former system with regard to the condition of property in the Philippines, the Government has desisted from that intention, which, furthermore, could not be effected without making considerable changes in civil law and without involving the public treasury in hazardous and indefinite responsibilities. Our mortgage law, which already had a large number of precedents in the Archipelago, can be reformed by slight amendments, which, together with the reforms of the provisions regarding the readjustment of royal patrimonies, will pave the way for the advent of the institutions of credit for lands, which is based on a sound mortgage law, and legally recorded deeds, which define and secure all interests in the land.

It would be superfluous to repeat here the benefits which may be expected in Porto Rico through these reforms. The institution of the registry is running smoothly there, without causing complaints, and now, in giving greater power and clearness to the same system, it is logical to expect that its salutary effects will increase.

To undertake the reforms mentioned, the Government depended on various legal authorizations, but the vote of the Cortes is necessary to put an end to implied mortgages, according to the text of article 3 of the royal decree of May 6, 1882. It appears desirable, therefore, to go beyond the limit which those authorizations seemed to fix; and, even if such reasons did not exist, the gravity of the question and the special respect which provisions regulated by private civil legislation deserve would have induced the Government to submit the reform to the Cortes, notwithstanding its urgent need for the island of Cuba. The plan which is herewith presented has been compiled, with the full approval of the Committee on Codes for the Colonies, in its essential points as well as in the method adopted to facilitate parliamentary deliberations, and to reconcile formalities of law with the necessity so urgently impressed by Cuba. If the Cortes will condescend to pass this new law, containing all that has been approved by the Senate, for the Peninsula, as well as the changes derived from the Civil Code, and if His Majesty will sanction the same, the Colonies will enjoy in advance remedies which are for the most part desired by the whole national territory.

In accordance with these remarks, with the authority of His Majesty and with the approval of the Council of Ministers, the undersigned has the honor to submit for the approval of the Cortes the following

PROPOSED LAW.

Article first and last. The Government is hereby authorized to put into effect the law submitted by the Colonial Minister, with the approval of the Committee on Codes, amending the mortgage law for Cuba, Porto Rico, and the Philippines.

Madrid, May 26, 1893.

The Colonial Minister,

ANTONIO MAURA Y MONTANER.

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MORTGAGE LAW FOR THE COLONIES.

TITLE I.—INSTRUMENTS REQUIRING RECORD.

ARTICLE 1. Registries of real estate shall be located in all towns where they have been established by law. Registries can not be abolished nor created, nor can the present territorial limits of any one of them be changed, without provision of law.

In every Registry shall be recorded the instruments relative to the estates situated within their territorial limits. If an estate is situated within the limits of two or more Registries, it shall be recorded in all of them.

ART. 2. In the Registries mentioned in the preceding article shall be recorded:

1. Instruments transferring or declaring ownership of realty, or of property rights thereto.

2. Instruments by which rights of use, use and occupancy, emphyteusis, mortgage, annuity (censo), servitudes, and any others by which estates are created, acknowledged, modified, or extinguished.

3. Instruments or contracts by virtue of which real property or property rights are conveyed to a person, although it is with the obligation of transferring them to others or of investing their value for specified purposes.

4. Writs declaring the legal incapacity for administration, or the presumption of death of absentees, or injunction, or in any way altering the civil capacity of persons with regard to the free disposition of their property.

5. Contracts for the lease of real property for a period exceeding six years, or such contracts on which rent has been paid in advance for three or more years, or, if having neither of these conditions, they contain a special covenant by which record thereof is required.

6. Title deeds of real property or property rights owned or administered by the State, or by civil or ecclesiastical corporations, subject to the provisions of laws or regulations.

ART. 3. To permit the record of the title deeds mentioned in the preceding article, they must be in the shape of a public document, writ, or certified document, issued by a judicial authority or by the Government or its agents, in the form prescribed by the regulations.

Notwithstanding the provisions of the preceding paragraph, those who have the ownership or possession of property rights recorded in their favor, the individual value of which does not exceed 300 pesos, may alienate or mortgage them by appearing before the proper notary with the grantee or mortgagee and two witnesses. The original draft of the contract shall necessarily contain a description

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of the realty and the enumeration of liens or incumbrances, if there be any, the names and surnames, the status (whether married or single), profession, and residence of the grantor and of the grantee, as well as the consideration involved.

The original contract, which should be executed on official paper, must be recorded in the Registry of the notary certifying to it. The copy, executed on paper of the lowest class (or, if it has been made on common paper, a stamp of the same class will have to be affixed thereto), shall be presented to the Registry of property for record, as it must serve as the title of the grantee.

Partitions of inheritances, which do not exceed 2,500 pesos in value, may be effected by all the participants or their representatives appearing before a notary, who shall execute an instrument containing descriptions of the estates, their award to each interested person, the covenants and limitations with which they are made, and other necessary requisites regarding the personality of the interested persons, so that said instrument may be recorded. The said document shall have to be signed by all the interested parties, or by two witnesses procured for this purpose. If any one of the interested parties should not know how or should not be able to sign, it shall be done in his name by either of the witnesses, the notary stating this circumstance in the instrument. Should the notary not be acquainted with the interested parties, he shall demand that two witnesses known to him shall identify them, who may be the same who take part in the execution of the instrument.

The duplicate of this instrument, a copy of which shall be given to each one of the interested parties, shall be their title for record, the original being filed in the notary's register.

When, according to law, an approval of the partition or awards is necessary, it shall be the duty of the notary, under his own responsibility, to send the original instrument to the Court of First Instance of the subdistrict, so that this requisite may be filled without any further delay than its posting in the office of the secretary of the court for the period of eight days. It shall then be returned, also officially and without charging any fees, to the notary who sent it, with a decree approving the partition.

Any objection made by one of the interested parties shall be heard before the same court in conformity with the regulations established for oral trials by the Law of Civil Procedure.

When, for the execution of the instrument referred to in the preceding paragraphs, a previous declaration of heirs is necessary, the notary shall demand of the interested parties the documents necessary to make said declaration, and the presence of the witnesses who shall testify as to the nonexistence of a will. It shall be his duty to send the record formed in this manner to the Court of First Instance, which, with the consent of the Department of Public Prosecution, shall thereupon issue the corresponding decree of heirship after such announcements or edicts as may be necessary, returning the original to the notary from whom it was received, who shall file it in his proper register, as has been before stated.

The fee for the above-mentioned procedure shall be 7.50 pesos; for the execution of the instrument of partition, if the total value of the estate does not exceed 1,000 pesos, the fee shall be 5 pesos; if the value exceeds 1,000 but is not more than 1,500, 7.50 pesos; from 1,500 to

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2,000, 10 pesos; for the copies issued to each interested party 25 cents a folio shall be charged.

The paper to be used for the originals as well as the copies of the record above mentioned shall be stamped paper of the lowest class.

ART. 4. For the effects of this law, transferable public offices (oficios públicos) conferred by the Crown, securities of public debt, or shares of banks or mercantile companies, even if they are negotiable, and those of ordinary partnerships, whatever be their kind, shall not be considered as real property.

ART. 5. The documents or deeds mentioned in article 2, which have been executed in foreign countries, and which are effectual in Spain in accordance with the laws, and such decrees as are mentioned in No. 4 of the same article, issued by foreign courts, which must be complied with in the Kingdom in accordance with the Law of Civil Procedure, shall also be recorded in the Registry.

TITLE II.—RECORD, ITS METHOD AND ITS EFFECTS.

ART. 6. The record of instruments in the Registry may be demanded indiscriminately:

By the person conveying the interest;

By the person acquiring the same;

By any person interested in securing the interest which is to be recorded;

By the person who is legally authorized to represent any of the above.

ART. 7. When in any instrument or contract any property interest in real estate is reserved to persons who were not parties to the same, the notary who executes the deed, or, in the absence of a notary, the official who may issue it, shall require the record of the said property right whenever the interests of said persons appear from the instrument itself, or from the documents and proceedings upon which its execution was based.

If the instrument or contract is subject to record, and this has been requested, particular mention must be made therein of the property right reserved, and of the persons in whose favor the reservation has been made.

ART. 8. Each estate which is recorded for the first time in the Registries shall be marked with a distinct and correlative number.

The records corresponding to each estate shall be marked by another correlative and special numeration.

ART. 9. Every record made in the Registry shall contain the following details:

1. The nature, location, and bounds of the realty which is the subject of record, or which is affected by the interest which is to be recorded, its superficial area measured according to the standard used in the country, and its equivalent in the metrical system, and its name and number, if they appear in the deed.

2. The nature, extension, conditions, and liens of any kind, of the interest recorded and its value, if it appear in the deed.

3. The nature, extension, conditions, and liens of the interest on which is created that which is the subject of record.

4. The nature of the instrument which is to be recorded and its date.

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5. The name and surname of the person, if it is an individual, or, if not, the name of the corporation, or the names of all the parties interested in whose favor the record is made.

6. The name and surname of the person, or the name of the corporation, or of the legal person who is the last owner of the interests or estates which are to be recorded.

7. The name and location of the court, notary, or official who executes the instrument which is to be recorded.

8. The date of the presentation of the instrument to the Registry, with a statement of the time.

9. The conformity of the record with the copy of the instrument from which it was taken, and if the latter is one of those which are to be kept in the office of the Registry, the *liber* in which it is entered will also be indicated.

10. The date of the record and the full signature of the Register.

ART. 10. In the record of contracts involving cash considerations or transfers thereof the amount involved shall be mentioned, as well as the manner in which the payment was made or agreed to.

ART. 11. If the record be one transferring ownership, it shall indicate whether the price of this transfer was paid for in cash or in installments; in the former case, if the whole price was paid or a part thereof, and in the latter, the manner and terms agreed to for payment.

Similar details shall be expressed if the transfer of ownership is made in consideration of an exchange, or awarded in payment, and whether either of the grantees is to allow the other any difference in money or goods.

ART. 12. The records of mortgage debts shall in every instance contain the value of the obligation secured and of the interest, if any has been stipulated, and if none has been stipulated, it shall not be considered secured by the mortgage according to the regulations prescribed by the present law.

ART. 13. Records of servitudes shall be made:

1. On the page reserved for record of servient estates.

2. On the page reserved for record of dominant estates.

ART. 14. The entries of trusts shall be made at once in the name of the trustees.

ART. 15. The recording of the decrees mentioned in No. 4 of article 2, and in article 5 of this law, and of the record of cautionary notices of the suits mentioned in No. 5 of article 42 shall clearly state the nature of the legal incapacity which appears from said decrees or suits.

ART. 16. The compliance or noncompliance with conditions precedent, and the nonfulfillment of conditions subsequent, or conditions involving recision, contained in recorded instruments or contracts, shall be recorded in the Registry by means of a marginal note.

The payment of any sum made by the grantee, after the record, on account of the purchase price or in full liquidation thereof, or to cover the difference between an exchange, or in the award in payment, shall also be recorded by means of a marginal note, provided the interested parties request it, or if it has been so ordered by the court or judge.

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The fulfillment of conditions subsequent or conditions involving recision, shall appear by means of a new record in favor of the person having the right thereto.

ART. 17. After any instrument transferring the ownership or possession of realty, or of property rights thereto, has been recorded or a cautionary notice thereof made in the Registry, no other instrument of the name or of a previous date may be recorded or noted, by which the ownership of the same estate or property right is transferred or encumbered.

If only the presentation of the instrument transferring ownership or possession has been recorded, no other deed of the kind previously mentioned may be recorded or noted for the period of thirty days following the date of said record.

ART. 18. Registers shall determine, under their responsibility, the legality of the documents by virtue of which the record is requested, and the capacity of the parties interested by what appears from said documents.

All the documents issued by judicial authorities shall also be determined by them under their responsibility, and for the sole purpose of admitting, suspending, or refusing their record or entry.

There shall be no further remedies than those mentioned in this law against the suspension or refusal of a record or cautionary notice, judges or courts by virtue of judicial documents not being permitted to compel the Registers in any other manner to record or enter.

ART. 19. Should the Register perceive any error with regard to the legal form of the instrument, or as to the capacity of the parties thereto, he shall advise the persons requesting the record thereof, so that, if they wish it, they may withdraw the instrument and make the necessary corrections within the time of the effectiveness of the entry of presentation, according to article 17; and if they do not withdraw the instrument and correct the error to the satisfaction of the Register he shall return the document, so that the necessary steps may be taken without prejudice to making the cautionary notice required by article 42, No. 8, if it is expressly requested.

In case the cautionary notice is not made, the entry of presentation of the deed shall continue effectual during the thirty days above mentioned.

The regulations shall explicitly describe the manner of proceeding in cases in which the requested record or entry is suspended or refused, by virtue of documents issued by judicial authorities.

ART. 20. To record or enter instruments transferring or encumbering the ownership or possession of real property or property rights, the interest of the person conveying it, or in whose name the transfer or encumbrance is made, must be previously recorded.

Registers shall refuse to record said instruments as long as this requisite has not been complied with, being directly responsible for the damage they may cause third parties by the violation of this provision.

However, they may record without this requisite all deeds executed by persons who have acquired an interest in the same property before the day on which the mortgage law was put into operation, provided they justify their title with trustworthy documents, and the same

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interest is not recorded in favor of another person; but in the record requested the essential circumstances of said title will be indicated, which shall be taken from the documents necessary for this purpose.

Registers shall refuse the requested record, if said interest is recorded in favor of a person other than the one executing the transfer or encumbrance.

Should the interest mentioned not be recorded in favor of any other person, and it is not proven that the grantor acquired it before the date mentioned, the Registers shall enter a cautionary notice at the request of the interested party, which shall be effectual during the period stated in article 96 of this law.

ART. 21. Public copies of instruments or contracts which require record shall at least contain all the details which the record must contain, or otherwise be null, relating to the persons of the parties thereto, to the estates, or to the recorded interests.

The owners of the real property or property rights acquired by any general or special instrument which does not mention and describe them individually, may obtain their record by presenting said instrument with the document, if there be one, which proves that they are the ones to whom the transfer was made, justified by any other trustworthy document showing that the property which it is desired to record is embraced in said instrument.

ART. 22. The notary who omits anything preventing the entry of the instrument or contract, in accordance with the provisions of the preceding article, shall, if it is possible to do so, repair his omission by issuing a new deed at his own cost, and in any case indemnifying the interested parties for the damage caused by his error.

ART. 23. The instruments mentioned in articles 2 and 5 which are not duly recorded or entered in the Registry can not prejudice third persons.

The record of real property and property rights, acquired through an inheritance or legacy, shall not prejudice third persons until five years have elapsed since the date thereof, excepting in cases of testate or intestate inheritances, legacies and additions thereto (mejoras), when left to legal heirs.

In the award of specific realty in an inheritance or general assignment to a person having the right thereto, to a creditor, or to any third person, with the obligation of devoting its value to the payment of debts or charges on the same inheritance or general assignment, the conditions under which the property has been awarded shall be entered when it is recorded in the name of the person to whom the property has been awarded, and it shall have the effects which this law establishes in No. 1 of article 37.

The other property of the inheritance or general assignment shall by this act be relieved of all responsibility, although only to the prejudice of third persons, notwithstanding that the debts of the inheritance or general assignment appear in their records. When no specific property has been awarded for the payment of debts, all the property of the inheritance or general assignment shall be relieved of all responsibility to the prejudice of third persons, even when the registry shows the existence of debts.

ART. 24. The instruments recorded shall also be effectual against creditors specially privileged by common legislation.

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ART. 25. Recorded instruments shall be effectual against third persons only from the day of record.

ART. 26. To determine which of two records, bearing the same date and relating to the same estate, shall have preference, the hour of the presentation of the respective instruments in the Registry shall be taken into consideration.

ART. 27. For the purposes of this law, those who have not participated in the recorded instrument or contract shall be considered as third persons.

ART. 28. The date of the entry of presentation, which must appear in the record itself, shall be considered the date thereof for all intents and purposes.

ART. 29. The ownership of any other property right which is expressly mentioned in the records or cautionary notices, although it does not appear in the Registry as a separate and special entry, shall be effectual against third persons from the date of the entry of presentation of the respective instrument.

The provisions of the preceding paragraph must not be understood as interfering with the obligation of specially recording the rights referred to, and with the responsibility incurred by persons who, in certain cases, must demand the record.

ART. 30. The records of the instrument mentioned in articles 2 and 5 shall be null if they do not contain the details mentioned in Nos. 1, 2, 3, 4, 5, 6, and 8 of article 9, and in No. 1 of article 13.

ART. 31. The nullity of the records treated of in the preceding article shall not prejudice any interest previously acquired by a third person, who was not a party to the recorded instrument or contract.

ART. 32. The record shall be understood to lack some of the details embraced in the numbers and articles mentioned in article 30, not only when all the requisites mentioned in each one of said numbers and articles is not embraced therein, but also when they have been expressed so inaccurately that a third person could thereby be let into error, as to the object of the fact itself, and suffer loss in consequence thereof.

When the inaccuracy is not material, as provided by the preceding article, or when the omission does not embrace all the details mentioned in some of the numbers and articles referred to, the record shall be declared null only when it causes some error or loss.

ART. 33. The record of instruments or contracts which are null in accordance with the law are not validated thereby.

ART. 34. Notwithstanding the statements contained in the preceding article, the instruments or contracts executed or covenanted by a person who, according to the Registry, has a right thereto, shall not be invalidated with regard to third persons, after they have once beeen recorded, although later the right of the person executing them is annulled or determined by virtue of a prior deed not recorded, or for reasons which do not clearly appear from the Registry.

Only by virtue of a recorded instrument may another later instrument, also recorded, be invalidated to the prejudice of third persons, with the exceptions mentioned in article 389.

The provisions of this article may at no time be applied to the instrument recorded in accordance with the provisions of article 390, unless the prescription has validated or secured the interest referred to therein.

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ART. 35. A prescription which does not require a just title shall not prejudice third persons if its possessory title is not recorded.

Neither shall a third person be prejudiced by a prescription which requires a just title if the latter is not recorded.

In either case the time of the prescription shall begin from the date of the record.

As to the legal owner of the realty or interest which is being prescribed, the title shall be determined and the time computed in accordance with common law.

ART. 36. Suits for recision or determination of title shall not be instituted against third persons who have recorded the instruments of their respective interests in conformity with the provisions of this law.

ART. 37. Exceptions to the rule contained in the preceding article are:

1. Suits for recision or determination of title which are due to the causes plainly expressed in the Registry.

2. Suits for recision of conveyances made for the purpose of defrauding creditors in the following cases:

When the second conveyance has been made without consideration.

When the third person was a party to the fraud.

In both cases the third person shall not be prejudiced by any action for recision not brought within one year from the time of the fraudulent conveyance.

ART. 38. In consequence of the provisions of article 36, no instruments or contracts shall be annulled or rescinded to the prejudice of third persons who may have had their interests recorded for any of the following reasons:

1. For the revocation of gifts in such cases as are permitted by law, except when the donee does not comply with conditions entered in the Registry.

2. For the legal retraction of the sale, or the legal preference (tanteo) in an emphyteusis.

3. For not having paid the full price of the article sold, or a portion thereof, if it does not appear by the record that the payment has been postponed.

4. For the resale of an article, when either the sale or resale has not been recorded.

5. For willful damage (lesion) in cases 1 and 2 of article 1291 of the Civil Code.

6. For conveyances made for the purpose of defrauding creditors, with the exception of the cases mentioned in the preceding article.

7. For any other actions, which the laws or special statutes permit certain persons to bring for the purpose of rescinding contracts for reasons not specifically stated in the record.

In every case that the suit for recision or determination of title can not be instituted against the third person, in accordance with the provisions of this article, the corresponding personal action may be brought to recover from the person who may have been the cause thereof, indemnity for the injuries and damages suffered.

ART. 39. By a conveyance without consideration to defraud creditors in case 1, No. 2 of article 37, shall be understood not only the one by gift or cession of a right, but also any conveyance, creation, or renunciation which the debtor makes of some property right within

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the periods respectively mentioned in the common or in the proper commercial laws, for the recision of conveyances made to defraud creditors, provided there was no price or its equivalent, or any pre-existing obligation which had fallen due.

ART. 40. In accordance with the provisions of the preceding article, and providing the circumstances mentioned exist, the following may be revoked:

1. Annuities (censos), emphyteusis, servitudes, uses, and other property rights created by the debtor.

2. The creation of dowries or gifts by reason of marriage, in favor of the wife, children, or strangers.

3. Conveyances of real property for the payment of debts which have not yet fallen due.

4. Voluntary mortgages created for the security of debts previously contracted without this guaranty, and which have not yet fallen due, provided the conditions of the principal obligation are not thereby encumbered.

5. Any contract by which the debtor transfers or renounces expressly or impliedly any property right.

It shall be understood that no price or its equivalent figures in said contracts, when the notary does not certify as to its delivery or if the contracting parties acknowledge that the delivery had previously taken place, and the fact is not proven or it is shown that it must be embraced in case No. 3 of this article.

ART. 41. The owner of the realty or of the property right shall be considered a party to the fraudulent conveyance in the second case, No. 2 of article 37:

1. When it is proven that he knew the purpose of making said conveyance, and that he was a party to it in the character of last owner or in any other capacity.

2. When he acquired his interest, either directly from the debtor or from a subsequent purchaser, for half or less than half its true value.

3. When any kind of false statements or subterfuge has been employed in the contract executed by the debtor, and it is proven that the owner had notice or took advantage thereof.

TITLE III.—CAUTIONARY NOTICES.

ART. 42. Cautionary notices of their respective interests in the corresponding public Registries may be demanded by:

1. The person who enters suit for the ownership of the real property, or for the creation, declaration, modification, or extinction of any property right.

2. The person who, in accordance with the law, obtains a writ of attachment against the real property of the debtor.

3. The person who, in any trial, obtains a decree against the defendant, which must be carried out in the manner prescribed by title 8 of the Law of Civil Procedure.

4. The person who enters a declaratory suit for the fulfillment of any obligation, and who, in accordance with the laws, obtains a decree ordering the sequestration or prohibiting the alienation of the real property.

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5. The person who enters a suit for the purpose of obtaining any of the decrees mentioned in No. 4 of article 2 of this law.

6. The widower by the right granted him by article 838 of the Civil Code.

7. The legatee who, according to the law, has no right to institute testamentary proceedings.

8. The agricultural creditor, during the time the work lasts which is the object of the loan.

9. The person who presents an instrument to the Registry which can not be definitely recorded on account of some omission which may be repaired, or on account of the incapacity of the Register.

10. The person who in any other case has a right to demand a cautionary notice in accordance with the provisions of this law.

ART. 43. In the case of No. 1 of the preceding article, no cautionary notice may be made unless it is so ordered by a judicial decree issued at the instance of a person having a right thereto and by virtue of a document sufficient in the opinion of the judge.

In the case of No. 2 of the same article, the record shall be obligatory, according to the provisions of article 1435 of the Law of Civil Procedure, in force in the Philippines, and article 1451 of the law which is in force in Cuba and Puerto Rico.

In the case of No. 5 of the said preceding article, the entry must also be made by virtue of a judicial decree, which may be issued by reason of the duty to do so, when there are no persons requesting it, provided the court, in its opinion, deems said entry advisable to insure the effect of any judgment which may be rendered in the suit.

ART. 44. The creditor who obtains an entry in his favor in cases Nos. 2, 3, and 4, of article 42, shall have preference, only with regard to the property entered, over those who have another claim against the same debtor, contracted subsequently to said entry.

ART. 45. In the case No. 6 of article 42, the widower may demand a cautionary notice of the right of use which belongs to him, against all the realty of the inheritance, in accordance with the procedure indicated in articles 55, 56, and 57, of this law.

ART. 46. The legatee, who has no right, according to the law, to institute testamentary proceedings, may at any time request a cautionary notice against the goods bequeathed him, if they consist of specific personal property.

If the legacy is not specific, the legatee may demand a record of its value against any of the realty of the inheritance sufficient to cover it, within 180 days following the death of the testator.

In either case the entry shall be made by presenting in the Registry the instrument on which the interest of the legatee is based.

The legatee of specific personal property, or of credits, or annuities arising therefrom, can procure a cautionary notice against such property only.

ART. 47. The legatee of goods or money can not demand their entry against real property which has been expressly bequeathed to others.

ART. 48. No legatee of goods or money who has a cautionary notice in his favor can prevent another legatee of the same kind from obtaining another entry within the period allowed by law in his favor against the property which has already been entered.

ART. 49. If the heir wishes to enter, in his name, the goods inherited within the 180 days mentioned, and there is no legal obstacle thereto,

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he may do so, provided that all the legatees previously renounce, by public deed, their right to entry, or, in case no express renunciation is made, the same legatees are notified thirty days beforehand of the request of the heir, so that they may make use of their privilege within said period, if they wish to do so.

This notification shall be made in accordance with the provisions of articles 254, 255, 258, and 509 of the Law of Civil Procedure in force in the Philippines, and 270, 271, 274, and 525 of the one in force in Cuba and Puerto Rico.

If the identity of the legatees is in doubt, the judge or court shall order that a cautionary notice of their legacy be made, either at the instance of the heir himself, or at that of any other interested person, or by reason of a special duty.

The heir who requests a record in his favor of the property inherited, within the 180 days referred to, may at once have a cautionary notice thereof made.

This entry shall not be converted into a definite record until the legatees have expressly or impliedly renounced the entry of their legacies, and it shall be canceled with regard to the property against which the same legatees request a cautionary notice to be filed in accordance with their rights.

ART. 50. The legatee who obtains a cautionary notice shall be preferred to the creditors of the heir who may have accepted the inheritance without the benefit of inventory, and to any other who, subsequent to the date of said entry, acquires some interest in the property entered; but it is to be understood that this preference is only in so far as the value of said property is concerned.

ART. 51. The cautionary notice shall give preference, with regard to the value of the entered property, to the legatees who may have made use of their right within the 180 days mentioned in article 46 over those who do not make use of their privilege within the same period.

Those who have secured said entry within this period shall have no preference over each other, but without prejudice to that corresponding to the specific legatee, in accordance with common law, over other legatees, in this instance as well as in the case of his not having requested its entry.

ART. 52. The legatee who is not specific, and allows the period mentioned in article 46 to elapse without making use of his privilege, may only later on demand a cautionary notice against the property of the inheritance which is in the hands of the heir; but this shall have no effect against any person who may have previously acquired and recorded some interest in the inherited property.

ART. 53. The legatee who, after the 180 days have elapsed, should request a cautionary notice against the hereditary property which is in the hands of the heir, shall not thereby acquire any preference over the other legatees who may have omitted this formality, nor shall he gain any other advantage than that of recovering his legacy before any creditor of the heir subsequently acquiring some interest in the entered property.

ART. 54. An entry, requested after this period has elapsed, may be made against property noted within this period in favor of another legatee, provided they are in possession of the heir; but the legatee who obtains it can recover his legacy only to the extent of the value of

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the property after the claims of those who had their entry made within said period have been satisfied.

ART. 55. A cautionary notice of legacies and of agricultural loans made shall not be judicially decreed without previous proceedings and hearing of those who may have any interest in preventing it.

ART. 56. The cautionary notice of legacies may be made by virtue of an agreement between the parties or by a judicial decree.

ART. 57. When the entry must be made by virtue of a judicial decree, the legatee shall appear before the judge or court having jurisdiction of the will establishing his right, presenting the documents on which it is founded, and specifying the property which he desires to have entered. The court, in an oral trial, and in accordance with the statements of the heir and said legatee, shall render a decision, either refusing or complying with the request, in accordance with the procedure established by chapter 4, title 2, book 2 of the Law of Civil Procedure.

In the latter case it shall specify the property which is to be entered, and shall send the respective communication to the Register, inclosing a literal copy of its decision, for compliance.

An appeal may be taken from this decision to the Audiencia of the district.

ART. 58. If the entry has been judicially requested by one legatee and a second one appears with a similar claim on the same property, he shall also be heard at the trial.

ART. 59. The agricultural creditor may request an entry against the estate which is the subject of the loan for the amounts which he advanced in one payment or in successive ones, presenting the written contract he may have in any legal manner made with the debtor.

This entry shall have, with regard to the agricultural loan, all the effects of a mortgage.

ART. 60. It shall not be necessary that the instruments by virtue of which the cautionary notice of agricultural loans is requested should specify the exact amount of money or effects these credits consist of, and it shall be sufficient for them to contain enough details to liquidate them when the works contracted for are terminated.

ART. 61. If the estate which is the subject of the agricultural loan should be subject to recorded real property agreements, the entry can only be made by virtue of a unanimous agreement, by means of a public instrument between the owner and the persons in whose favor said agreements are created, on the object of the improvement itself, and the value of the estate before beginning the works, or by virtue of a judicial decree issued in a proceeding for the purpose of fixing said value, and in which all the parties indicated are cited.

ART. 62. If any of those in whose favor the real-property agreements mentioned in the preceding article are entered is not a person whose identity is known, or is absent and his residence is unknown, or he refuses his consent thereto, the entry may only be made by virtue of a judicial decree.

ART. 63. The value at which the estate which is the subject of the agricultural loan is appraised, before the work is begun, shall appear in the record of the debt.

ART. 64. The persons in whose favor property rights are created in the estate which is the subject of the agricultural loan, the value of which appears in the form prescribed by the preceding articles, shall

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reserve their rights of preference with regard to the agricultural creditor, but only to the extent of the appraised value of the estate.

The agricultural creditor shall be considered as a mortgagee, with respect to the excess of the value of the estate over the obligations mentioned above, and in any case, with respect to the difference between the price at which the estate was appraised before the improvement and its value at the time of the judicial conveyance.

ART. 65. Errors which may be remedied are such as affect the validity of the instrument itself, without necessarily producing the nullity of the obligation created thereby.

Should the instrument contain any of these errors, the Register shall suspend its record, and shall enter a cautionary notice thereof if the person presenting the instrument request it.

Errors which can not be corrected are such as necessarily produce the nullity of the obligation.

If the instrument should not contain any error of this kind, its record will be refused, and no cautionary notice can be entered.

ART. 66. The parties interested may object to administrative officers against the decision respecting the instrument made by the Register, without prejudice to applying, if they wish to do so, to the courts of justice to discuss and contend among themselves regarding the validity or nullity of the documents or of the obligation. In case record is suspended on account of errors in the instrument which may be corrected, and the cautionary notice is not requested, the interested parties may correct the errors within the thirty days during which the entry of presentation is effective. If the cautionary notice is entered, they may be corrected during the time the latter remains in force, according to article 96.

If record has been refused, and the interested person should enter a suit before the courts of justice to have established the validity of the instrument or obligation, within the thirty days following the date of the record of presentation, he may demand entry of a cautionary notice of his suit, and the entry shall be antedated to conform with the date of the record of presentation.

After said period the cautionary notice of the suit shall be effectual only from its date.

In the case of appealing to administrative officers against the decision respecting the instrument, all the periods mentioned in the two preceding paragraphs shall be suspended from the day the appeal is entered until its final resolution.

ART. 67. In case an entry is made because the record can not take place on account of an error which can be corrected, the interested party may demand that the Register give him a copy of said entry, authenticated by his signature, in which shall appear whether there are pending or not any other instruments relative to the same realty, and, if so, what they are.

ART. 68. Decrees ordering or refusing a cautionary notice in cases 1, 5, and 6 of article 42 may be appealed from for review only (un solo efecto).

In case No. 7 of the same article the decree may be appealed from for review and also to stay proceedings (ambos efectos) when the person who has some prior property right in the recorded realty has opposed the entry.

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ART. 69. The person who may demand a cautionary notice of an interest and should not do so within the period prescribed for this purpose can not have it entered subsequently in his favor to the prejudice of a third person who may have recorded the same interest, having acquired it from a person who, according to the Registry, was competent to convey it.

ART. 70. When the cautionary notice of an interest is converted into a definite record of the same, it shall be effectual from the date of its entry.

ART. 71. The real property or property rights which are entered may be conveyed or encumbered, but without prejudice to the right of the person in whose favor the entry was made.

If the real property or property rights of which cautionary entries have been made in accordance with article 42, Nos. 2 and 3, should be awarded to a claimant by virtue of a judgment rendered in a suit, or if it were necessary to offer them at public sale, a notice of said award or advertisement shall be transmitted to the person who may have acquired said property or rights during the pendency of the suit.

Said notice must be issued at the instance of the plaintiff after the award has been finally decreed or before the sale in the judicial proceedings takes place, observing the provisions of articles 260 to 269 of the Law of Civil Procedure in force in the Antilles, and articles 244 to 253 of the one in force in the Philippines.

After the notice referred to in the preceding paragraph has been made the person notified may free the property in question by paying the amount mentioned in the entry to cover principal and costs; this must not be construed as meaning that he is obliged to pay a larger sum than that mentioned in the entry. Should he not do so within ten days, the record of his ownership shall be canceled in the Registry, as well as any other record that has been made after the entry, for which purpose the respective order shall be transmitted to the Register at the instance of the purchaser at the auction, or of the person to whom it has been awarded.

If the conveyance executed and recorded during the pendency of the suit relates to an estate, the ownership of which is demanded by virtue of a claim, a cautionary notice of which has been made in accordance with No. 1 of article 42 of this law, a certified copy of the final judgment in favor of the ownership of the plaintiff shall be a valid title deed by virtue of which this record may be canceled.

Final decrees of prohibition or declaring the legal incapacity of some person for administration, or by which his civil status with reference to the free disposition of his property is modified, shall be sufficient documents for the cancellation of records of conveyances executed during the period of the pendency of the suit instituted by the person who has been declared incapacitated, provided a cautionary notice of the claim, which is the basis of the decree, shall have been previously made in accordance with the provisions of article 42, No. 5.

ART. 72. Cautionary notices shall embrace the details required for record by articles 9, 10, 11, 12, and 13, in so far as they appear in the deeds or documents presented at the time said entries are requested.

Such as are caused by writs of attachment or sequestration shall express the reason for which they were granted and the amount of the obligation involved.

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ART. 73. Any judicial decree ordering a cautionary notice, shall express the details which the latter must contain, according to the provisions of the preceding article, if it so appear from the deeds or documents, which were examined and were the basis of said decree.

When the entry must embrace all the property of a person, as in cases of incapacity or other similar cases, the Register shall enter all that are recorded in favor of such person.

In this case the property which is not recorded may also be entered, provided the judge or court so order it, and a previous record is made in favor of the owner of the property encumbered by said entry.

ART. 74. If the instruments or documents, by virtue of which the cautionary notice is requested judicially or extra judicially, should not contain the details required to make it valid, such details shall be stated by the interested parties in the petition in which they solicit the entry by common consent. Should there be no agreement, the person requesting the entry shall mention these details in the document in which he solicits it, and after hearing the other interested party as to its accuracy, the judge or court will decide as they deem proper.

ART. 75. Cautionary notices shall be made in the same part of the book where the record would be made, if the right entered should be converted into a recorded right.

ART. 76. A cautionary notice shall be null when the estate or interest entered, or the persons whom the entry concerns, or its date, can not be identified therefrom.

TITLE IV.—CANCELLATION OF THE RECORD AND OF THE ENTRY OF CAUTIONARY NOTICES.

ART. 77. Records are not extinguished as to third persons except by their cancellation, or by a record of the transfer of the ownership or property right recorded, to another person.

ART. 78. Cancellation of records or of cautionary notices may be total or partial.

ART. 79. A total cancellation may be demanded, and should be ordered in a proper case:

1. When the realty, which is the subject of the record, is completely extinguished.
2. When the recorded interest is also completely extinguished.
3. When the instrument, by virtue of which the record was made, is declared null.
4. When the nullity of the instrument is declared, because some essential requisite is lacking, in conformity with the provisions of article 30.

ART. 80. A partial cancellation may be demanded and should be decreed in a proper case:

1. When the realty, which is the subject of the record or cautionary notice, is diminished.
2. When the interest recorded is diminished in favor of the owner of the encumbered estate.

ART. 81. The enlargement of any recorded interest shall be the subject of a new entry, in which reference shall be made to the interest enlarged.

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ART. 82. The records or cautionary notices made by virtue of a public document can not be canceled except by a final decree, from which there is no appeal in cassation pending, or by any other authenticated instrument or document, in which the person in whose favor the record or entry has been made, or his legal representative or attorney signifies his consent to the cancellation.

Notwithstanding the provisions of the preceding paragraph, the records or entries referred to therein may be canceled without the requisites mentioned, when the interest recorded is extinguished by a declaration of law, or as a result of the recorded deed itself.

The records and entries made by virtue of judicial decrees may only be canceled by a final decree, in which the facts provided by the first paragraph of this article appear.

Records made to account for sums represented by negotiable instruments may be canceled through the presentation of a document executed by those who collected the debts, and from which it must appear that at the time of its execution the negotiable instruments were canceled, or by a petition signed by these parties and the debtor, to which the instruments referred to will be attached, duly perforated. If some of them have been lost, there shall be presented with the document or petition a copy of the judicial decree declaring their cancellation. The register must convince himself of the authenticity of the signatures and the identity of the persons who make the request.

Records made to account for sums represented by instruments executed to bearer can not be canceled if the extinction of all the secured obligations can not be proven, unless a copy of the judicial decree declaring the extinction of said obligations is presented.

In the case mentioned in the preceding paragraph, in order to issue the judicial decree, four calls of those having a right to oppose the cancellation must be made by means of public notices and advertisements in the official papers, each one for the period of six months.

ART. 83. If a record or entry has been created by virtue of a judicial decree, and the parties interested agree in a legal manner to cancel it, they shall apply to the judge or court of competent jurisdiction by means of a document expressing their wishes, and after its contents have been ratified, if there is or can be no prejudice against third persons, a decree ordering the cancellation shall be issued.

The judge or court shall also issue a similar decree, when it is deemed advisable, although the person in whose favor the entry or record has been made does not consent to the cancellation.

If the record or entry has been created by means of a public document and its cancellation is ordered, the person whom said cancellation prejudices not consenting thereto, the other interested party may enter a declaratory suit therefor.

ART. 84. The judge or court, or the one which has legally succeeded it in such matters, which may have ordered an entry of a cautionary notice, or its conversion into a definite record, shall be competent to order its cancellation.

ART. 85. A cautionary notice shall be canceled, not only when the interest entered is extinguished, but also when it is respectively agreed to in the document or ordered in the decree that it be converted into a definite record.

If the entry has been made without a public document, and it is to be canceled without converting it into a definite record, the cancella-

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tion may also be made by means of documents similar to those which were presented when the entry was requested.

ART. 86. An entry in favor of a legatee who is not specific, shall be extinguished one year after its date.

If a legacy is not demandable at the end of ten months, the cautionary notice shall be considered effectual for two months longer, during which time it may be demanded.

ART. 87. If, before the cautionary notice is extinguished, it appears inefficient for the security of the legacy, on account of the liens or special conditions of the property entered, the legatee may demand that another be created against different property in the inheritance, provided such exists on which such incumbrance may be charged.

ART. 88. The legatee of rents or periodical annuities, absolutely imposed by the testator on any heir or on other legatees, but without declaring this obligation a personal one, shall have a right, within the period fixed in article 86, to demand that the cautionary notice which he may have made of his claim be converted into a record of mortgage.

ART. 89. The heir or legatee who has been charged with the annuity must create the mortgage mentioned in the preceding article on the same property which has been entered, if it is awarded to him, or on any other real property of the estate which may be awarded to him.

The choice, in any case, lies with the encumbered heir or legatee, and the person receiving the annuity must accept the mortgage offered by the former, provided it is sufficient and on property of the estate.

ART. 90. The person receiving the annuity, who has not filed a cautionary notice, may also, at any time, demand a record of his mortgage interest in the property of the estate which is in the possession of the heir, or which may have been awarded to the specially charged legatee or heir, provided he can do so by means of an efficient cautionary notice in accordance with the provisions of the preceding article.

This entry will only be effectual from its date.

ART. 91. The person receiving the annuity, who may have obtained a cautionary notice, can not demand a mortgage on any other property than that entered, if it is sufficient to secure the legacy. Should it not be sufficient, he may demand the creation of a mortgage on other property of the estate; but in the latter case he must act in conformity with the provisions contained in the second paragraph of the preceding article.

ART. 92. An entry in favor of an agricultural creditor shall be extinguished sixty days after the completion of the work which was the subject of the loan.

ART. 93. An agricultural creditor may convert his cautionary notice into a mortgage record if at the end of the period mentioned in the preceding article his loan has not been repaid entirely, the time stipulated in the contract not having expired.

If the time stipulated for the payment has expired, the creditor may either extend it by converting the entry into a mortgage record, or may demand immediate payment, for which purpose the entry will have the effect of a mortgage.

ART. 94. To convert an entry of an agricultural credit into a record of mortgage, the former shall be liquidated, if it is not already so, and a public deed shall be executed.

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ART. 95. Any questions which may arise between the creditor and the debtor as to the liquidation of the agricultural loan, or regarding the creation of the mortgage, shall be decided by means of a declaratory suit. During the trial and settlement of this suit the cautionary notice shall remain in force and effect.

ART. 96. An entry demanded because a record could not be made on account of errors which can be corrected in the deed presented, shall become null sixty days after its date.

This period may be extended to one hundred and eighty days for just cause, and by virtue of an administrative resolution of the president of the audiencia of the district, provided the deed presented does not emanate from a judicial decree, in which case the time can only be extended by another similar decree.

ART. 97. The cancellation of the records of cautionary notices does not in and of itself extinguish, with regard to the parties, the interests recorded which it effects; but when it has been made without any apparent cause for annulment, such as those mentioned in the following article, it shall have all its effects with regard to third persons, who, by reason thereof, may have acquired or recorded any interest, although later it is annulled for some reason which does not clearly appear from the said record of cancellation.

ART. 98. The cancellation shall be void:

1. When it does not clearly show what record or entry has been cancelled.

2. When it does not contain the names of the parties thereto, of the notary, or in a proper case the judge or court, and the date of the execution or delivery of the deed, by virtue of which the cancellation was made.

3. When it does not express the name of the person at whose instance or with whose consent the cancellation was made.

4. When the cancellation is made in the name of a person other than the one in whose favor the record or entry is made, and it does not appear therein by what authority said person acted.

5. When a partial cancellation does not specify clearly what part of the realty has disappeared, or what part of the obligation is extinguished and what still remains.

6. When the cancellation having taken place by virtue of the record or entry of a private document, the Register does not certify that he is acquainted with the persons signing the same, or with the witnesses, in default of the former.

7. When the date of the presentation of the instrument by virtue of which the cancellation was ordered or agreed to, is not contained in the Registry.

ART. 99. The cancellation may be declared null, but not to the prejudice of third persons, in accordance with the provisions of article 97:

1. When the instrument by virtue of which it was made is declared false, null, or insufficient.

2. When it has been effected through error or fraud.

3. When an incompetent judge or court ordered it.

ART. 100. Registers shall determine under their responsibility, the legality of documents by virtue of which cancellation is requested, and the capacity of the parties thereto.

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ART. 101. They shall determine in the same manner documents issued by judicial authorities, for the sole purpose of making or not making the cancellation of some record in the Registry.

Against these determinations, and those mentioned in the preceding article, the remedies mentioned in article 66 of this law may be taken.

ART. 102. The Register shall at once make the cancellation upon the president declaring the competency of the judge.

When the judge is not considered competent, the same Register shall communicate this decision to the person interested, returning the documents.

ART. 103. An appeal may be taken to the Audiencia from the decision of the president by the judges as well as by the parties interested, who, after a hearing, shall determine what it may deem just.

A remedy by cassation may be had as respects the decision of the Audiencia.

ART. 104. The cancellation of any record must necessarily contain the following facts:

1. The kind of document by virtue of which the cancellation is made.
2. The date of the document and of its presentation to the Registry.
3. The name of the judge, court, or official who may have issued it, or the notary before whom it was executed.
4. The names of the parties interested in the records.
5. The manner in which the cancellation was made.

TITLE V.—MORTGAGES.

SECTION 1.—*Mortgages in general.*

ART. 105. A mortgage, directly and primarily, subjects the property on which it is imposed, no matter who may be its owner, to the fulfillment of the obligation for the security of which it was constituted.

ART. 106. The following only are mortgageable:

1. Real property.
2. Property rights in the realty, alienable in accordance with the laws.

ART. 107. The following are mortgageable, but with such restrictions as are hereinafter expressed:

1. A building erected on ground belonging to another, which, if mortgaged by the person who constructed it, shall be without prejudice to the right of the owner of the ground, this incumbrance being only secured by the interest which the person who constructed the building has therein.
2. The right of use, the mortgage being extinguished if the use terminates by an act independent of the will of the grantee. If it is terminated by his will, the mortgage shall be effectual until the obligation secured is fulfilled, or until such time as the use would naturally have terminated had the act not occurred which put an end thereto.

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3. The mere ownership, in which case, if the use is merged with it in the person of the owner, the mortgage shall not only be maintained, but shall also extend to the use itself, unless the contrary has been agreed to.

4. Property already mortgaged, even if it was agreed not to mortgage it again, provided the preference is reserved, which the creditors in whose favor the prior mortgages are created have in the collection of their loans.

5. Surface, pasture, water, timber, and other similar property rights, provided the interests of other owners in common of the property are reserved.

6. Railroads, canals, bridges, and other works destined for the public service the operation of which the Government has granted for ten or more years, and the buildings or lands which, although not directly and exclusively used for said service, belong to private parties, provided they have been added to those works; but the mortgage shall be dependent on the determination of the right of the owner of the concession.

7. Property belonging to persons not having the free disposition thereof, in the cases and with the formalities which the laws prescribe for its alienation.

8. The interest in a voluntary mortgage, but the said mortgage shall be dependent on the determination of the said interest.

9. Property sold under a covenant to reconvey, or similar agreement, if the purchaser or his attorney limits the mortgage to the amount he would receive in case the sale is decided upon, a notice of the contract being given to the vendor, so that if the property is redeemed before the mortgage is canceled he shall not return the price without the knowledge of the creditor, provided no judicial order has been issued to that effect, or if the vendor or his agent mortgages the value of the property and also the amount which the purchaser would realize if the sale is decided on; but in the latter case the creditor can not proceed against the property mortgaged without previously redeeming it, in the name of the debtor, within the period the latter has a right to do so, advancing the sum which may be necessary for this purpose.

10. Property in litigation, if a cautionary notice has been made of the claim which is the basis of the litigation, or if it appears in the record, that the creditors had knowledge of the suit, but in either case, the mortgage shall depend upon the decision of the suit, without prejudicing the rights of the persons interested therein, with the exception of those of the mortgagor.

ART. 108. The following are not mortgageable:

1. Growing crops and unpaid rents, separated from the estate which produces them.

2. Chattels permanently located in buildings, either useful or ornamental, or for the service of some industry, unless they are mortgaged together with said building.

3. Public offices conferred by the Crown (oficios públicos).

4. Bonds of the State debt, or of provinces or towns, and the obligations and stocks in banks, corporations, or companies of any kind.

5. The property right in things, which, although they will be owned in the future, are not yet recorded in the name of the person who will have a right to own them.

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6. Servitudes, unless they are mortgaged together with the dominant estate, and excepting in any case that of water, which may be mortgaged.

7. The right of use which the law allows fathers or mothers in the property of their children and the surviving spouse in the property of the deceased.

8. Use and occupation.

9. Mines, if a definite title thereto has not yet been obtained, even if they are situated within one's own property.

ART. 109. The owner of property which is subject to pending conditions subsequent may mortgage or convey the same, provided the rights of the person interested in said conditions is not prejudiced, an express reserve of the rights referred to being made in the record.

If the pending condition subsequent should affect the whole property mortgaged, the latter can not be conveyed to collect the debt until said condition has been fulfilled and the realty passes to the absolute ownership of the debtor, but the income to which the latter is entitled shall at once be applied to the payment of the debt.

When the condition subsequent affects only a portion of the property mortgaged it must be judicially conveyed, together with said condition subsequent, to which the ownership of the debtor is subject, and the selling price, besides the income he is entitled to, being applied to the payment.

If, before the sale takes place, the debtor acquires the absolute ownership in the property mortgaged, the creditor has a right of action against it, and may demand that it be conveyed for the payment.

The provisions of this article may be applied to the property possessed, with a pending right of subrogation in favor of persons who may not have consented to the mortgage of said property.

ART. 110. A mortgage extends to natural increase, improvements, growing crops, and rents not collected when the obligation falls due, and the value of indemnities allowed or due the owner for insurance on the property mortgaged, or by virtue of condemnation by right of eminent domain.

ART. 111. In accordance with the provisions of the preceding article, the following shall be considered mortgaged together with the estate, provided they belong to the owner of the estate, although they are not mentioned in the contract:

1. Chattels permanently located in a building, either useful or ornamental, or for the service of some industry, even though they were placed there after the creation of the mortgage.

2. Improvements consisting of new plantings, works of irrigation and drainage, repairs, works for safety or alterations, comfort, ornamentation or raising of buildings, and any other similar works, which do not consist of additions to the land, except natural accretions, or in the new construction of buildings, where previously none existed.

3. Crops, which at the time the obligation falls due, are growing on the trees and plants, or have already been harvested, but not yet removed or warehoused.

4. Rents due and not yet paid, whatever may be the reason they have not been collected, and such as shall have to be paid until the creditor has recovered his whole credit.

5. Indemnities awarded or due the owner of the mortgaged realty, either for the insurance thereof or for the crops, provided the damage

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occurred after the creation of the mortgage, or on account of condemnation of the land by the right of eminent domain.

ART. 112. When the mortgaged estate passes into the hands of a third party, the mortgage shall not extend to the chattels permanently located in the buildings, nor to the improvements which do not consist in repairs, works for security or alterations, provided the costs thereof have been defrayed by the new owner, nor to growing crops and rents due, which are the property of the latter.

If some portion of the ground of an estate encumbered by prior mortgages passes into the hands of a third person, and it appears by the Registry that it does not contain any machinery, chattel, object, or construction of any kind, said portion of the estate shall continue subject to prior mortgages on the estate; but the third person may remove, whenever it is convenient for him to do so, any machinery, object, chattel, or construction which he may have brought or placed there, according to the circumstances, judicial proceedings against such additions being prohibited, and it not being lawful, when the estate and the portion sold is attached or sold at a public sale by other previous creditors of record, to demand the retention of such additions, whatever may be their character. Prior mortgagees shall be notified of the record of the sale.

ART. 113. The owner of the accessions or improvements which are not considered mortgaged according to the provisions of the first paragraph of the preceding article, may demand their value or retain the objects of which they consist, if this can be done without depreciating the value of the rest of the property; but in the former case he can not prevent the fulfillment of the principal obligation under the pretext of enforcing his right, being obliged to recover what is due him for the price of the property itself when it is conveyed for the payment of the debt.

ART. 114. A mortgage created in favor of an interest-paying debt shall secure to the prejudice of third persons, besides the capital, only the interest for the two years last past and such part as is due for the current year.

ART. 115. After three years have elapsed from the time the loan began to accumulate interest which remains unpaid, the creditor may demand that the mortgage created be enlarged on the same mortgaged property, for the purpose of securing the interest corresponding to the first of said years, but only in case the obligation to pay part of the interest is past due and the debtor has failed to satisfy it.

If the creditor makes use of his right after said three years have elapsed, he may demand that a mortgage be extended to cover all the interest which at the time of said extension was not covered by the first mortgage; but this can in no case prejudice a mortgage created in favor of a person who had previously and after the two years acquired an interest in the mortgaged property.

Should the debtor not consent to said mortgage extension the creditor may demand it in a declaratory action and have a cautionary notice of the alleged claim entered.

ART. 116. If the mortgaged estate does not belong to the debtor, the creditor can not demand that the extension of the mortgage mentioned in the preceding article be created; but he has the same right of action with regard to the other real property which the said debtor possesses, and which he can mortgage.

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ART. 117. The creditor, in case of annuities (censos) in arrears, can not proceed against the estate thus encumbered by the annuity (censo) to the prejudice of another mortgagee or subsequent annuitant, except in the manner and with the restrictions mentioned in articles 114 and 115; but he may demand a mortgage in those cases, and with the limitations which a mortgagee has a right to, according to the preceding article, whoever may be the owner of the estate encumbered by the annuity (censo).

ART. 118. When an estate on which an emphyteusis has been given has incurred forfeiture according to the laws, it shall pass into the hands of the immediate owner of the property, with the mortgages or incumbrances on the realty, constituted by the grantor of the emphyteusis, but all interests of said immediate owner being reserved at all times.

ART. 119. When several estates are mortgaged together to satisfy one debt only, the sum or portion of the incumbrance for which each estate is to be responsible shall be determined.

ART. 120. After the portion of the debt for which each mortgaged estate must be responsible is entered in the record, they can not be proceeded against to the prejudice of third persons, except for the amount for which they are respectively responsible and the corresponding interest in accordance with the provisions contained in preceding articles.

ART. 121. The provisions of the preceding article shall not be understood as prejudicing the rights of the creditor, if the mortgage does not satisfy the total amount of the debt, to proceed to recover the difference against the other mortgaged property which the debtor still owns, but without preference as to said difference over those who may have acquired some real interest in the property after the mortgage was recorded.

ART. 122. The mortgage shall continue intact as long as it is not canceled on all the property mortgaged, even if the obligation secured is reduced, and on any other portion of the same property which is retained, although the remainder has disappeared, but without prejudice to the provisions contained in the following two articles.

ART. 123. If a mortgaged estate is divided into two or more parts, the mortgage debt shall not be distributed among them unless the creditor and the debtor voluntarily agree to do so. If this distribution does not take place, the creditor may proceed for the whole of the sum guaranteed against any of the new estates into which the first one was divided, or against all of them simultaneously.

ART. 124. If a mortgage created for the security of a debt is distributed among various estates and the portion of the debt which is due from any of the estates has been paid, the interested party may demand a partial cancellation of the mortgage with regard to said estate. If the portion of the debt paid has been applied to the discharge of one or the other of the encumbered estates, not being less than the sum for which each is responsible, the debtor may select the one which is to be redeemed.

ART. 125. If there is only one estate mortgaged, or being several and the responsibility of each one is not stated on account of the occurrence of the case mentioned in article 123, the discharge can not be demanded of any portion of the mortgaged property, no matter what portion of the debt has been satisfied by the debtor.

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In the case of one or several estates being encumbered by mortgage debts of various creditors, and they are sold or awarded for the payment of the first creditor in such manner that the value of what is sold or awarded does not equal or exceed the mortgage debt which is liquidated, the remaining debts shall be, by act and right, considered canceled, and will therefore be canceled in the registry after the proper order of the court for the sale or award, and the reasons therefor are filed referring to the instrument which created the solvency of the preferred debt, all subsequent records of annuities (censos) or mortgages and records of attachment also made subsequently, thus leaving the estate or estates which have been conveyed or awarded free from all incumbrances.

This shall be without prejudice to other rights and actions which the remaining creditors may exercise against the debtor in accordance with the laws.

ART. 126. A mortgage created by a person who has no right to do so, according to the Registry, shall not be valid, even if the mortgagor subsequently acquires said right.

ART. 127. In the mortgage shall appear the value of the estate as appraised by the contracting parties, which shall serve as a basis for the only judicial sale which can take place, if the period of the loan having expired, it does not appear in the Registry of property that said loan has been paid.

ART. 128. The judicial procedure before the public sale shall consist in the presentation, by the creditor, of a document to the court of competent jurisdiction in the place in which the property is situated, accompanied by the instrument constituting the debt, with a note of the record, and a certificate from the Register of property testifying that the mortgage lien does not appear canceled in his books at the end of said period.

Payment shall be demanded of the debtor if he resides in the place in which the estate is situated, or if his domicile is known; otherwise it shall be sufficient to notify the person in charge of the estate in any legal capacity, so that he may inform the owner of the demand.

Thirty days after this demand the orders shall be published in the Gazette (Gaceta) of the proper island, stating the condition of the title deeds, the public sale taking place twenty days after said publication. If there is no bidder the claimant may demand that the property be awarded to him, being responsible for all prior liens, if there be any.[a]

When an estate is sold at public auction at the instance of a second or subsequent mortgagee, or common creditors, the sale shall be declared null and void if a sufficient sum is not offered to cover all previously recorded debts, including the interest which it appears is stipulated according to the Registry. Any subsequent sales which they may deem advisable may take place at the cost of the claimants, providing they prove by a certificate from the Registry that they have not as yet been paid.

The estate proceeded against shall not be responsible for any costs which may be incurred, if the amount indispensable for this purpose is not entered in the Registry.

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[a] See G. O. No. 18, Hdqrs. Dept. P. R., Feb. 12, 1899.

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In the regulations for the execution of this law, the other details for this summary proceeding shall be determined.

ART. 129. If, before the creditor collects his interests in the mortgaged estate it should pass into the hands of a third person, all the measures prescribed in the preceding article shall have to be instituted against the latter, who is subrogated to the person of the debtor.

ART. 130. The provisions of the two preceding articles may also be applied to the case when an installment of the principal or interest has not been paid, due at different periods, if one of them lapses without the debtor fulfilling his obligation, provided said stipulation is recorded in the Registry.

ART. 131. If for the payment of one of the installments of the capital or interest it should be necessary to convey the mortgaged estate, and other installments of the obligation shall still remain due, the sale shall take place, and the estate shall be transferred to the purchaser with the proper mortgage for the portion of the debt which has not yet been satisfied, which portion with the interest will be deducted from the price.

If the purchaser does not desire the estate with this lien, the value thereof with the proper interest shall be deposited, to be paid to the creditor when the pending payments fall due.

ART. 132. A person who either may have acquired only the use or some interest in the mortgaged estate, or the title or direct ownership of the property, the correlative interest remaining in the debtor shall be considered a third party in interest, for all the purposes of article 129. If there should be more than a third party in interest, because one person had the title or direct ownership and another the use of, or some interest in, the mortgaged estate, the summons shall be served on the person in charge of the estate.

ART. 133. In no case shall the summary proceedings be suspended, on account of the objections of a third person, if they are not founded on a deed which has been previously recorded, nor by the death of the debtor, nor that of the third party owning the estate, nor by a declaration of bankruptcy, nor by the general assignment proceedings of creditors against any of them.

ART. 134. A foreclosure shall be prescribed after twenty years, computed from the time when such action could have been instituted, in accordance with the recorded deed.

ART. 135. Mortgages legally created on property which hereafter can not be mortgaged in accordance with this law, shall be governed, during the time they are in force, by the previous legislation.

ART. 136. Records and cancellations of mortgages shall be made in accordance with the regulations established in titles 2 and 4, for records and cancellations in general, without prejudice to the special provisions contained in this title.

ART. 137. Mortgages are voluntary or legal.

SECTION 2.—*Voluntary mortgages.*

ART. 138. Voluntary mortgages are mortgages which are agreed to between parties, or constituted by the will of the owner of the property on which they are created.

ART. 139. Voluntary mortgages may only be created by persons who have the free disposition of their property, or, in case they should

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not have it, if they are authorized to do so in accordance with the laws.

ART. 140. Persons who, in accordance with the provisions of the preceding Article, are authorized to create voluntary mortgages may do so personally, or through an agent having a special power of attorney to contract this class of obligations, executed before a Notary Public.

ART. 141. A mortgage made by a third person without sufficient power, may be ratified by the owner of the mortgaged property; but this shall only be effectual from the date of the new record, by which the error committed is rectified.

ART. 142. A mortgage created for the security of a future obligation subject to recorded conditions subsequent, shall be effectual against third parties from the date of record, if the obligation is finally contracted or the condition fulfilled.

If the obligation secured is subject to a recorded condition subsequent, the mortgage shall be effectual as to third persons until it appears from the Registry that the condition has been fulfilled.

ART. 143. When the future obligation has been contracted, or the condition subsequent mentioned in the preceding Article is fulfilled, the interested parties must record it by means of a marginal note in the mortgage record, without which requisite the mortgage created can not benefit nor prejudice third persons.

In the same manner they must enter the nonfulfillment of the condition or of the obligation.

ART. 144. Any act or agreement between the parties which might modify or destroy the efficacy of a prior mortgage debt, such as payment, compensation, extension of time, a contract or promise not to demand, the novation of the original contract, or a settlement or compromise, shall not be effectual against third persons unless it is entered in the Registry by means of a new record, by a partial or total cancellation, or by a marginal note, according to the particular cases.

ART. 145. The interest on the loan shall not be considered secured with the mortgage in the manner prescribed by Article 114 unless the stipulation and amount of said interest appear in the same record.

ART. 146. In order that voluntary mortgages may be legally created in a valid manner, it is necessary:

1. That they were agreed to or constituted by a public instrument.
2. That the instrument is recorded in the Registry established by this law.

ART. 147. A mortgagee may proceed against the property mortgaged for the payment of the interest due, no matter at what period the principal is to be paid; but if a third person, whom the proceedings could injure, is interested in said property, the sum demanded can not exceed that due and not paid for the interest for the two years last past and the part due for the current year.

ART. 148. Such part of the interest which the creditor can not demand in a foreclosure suit, he may claim in a personal action, being considered with regard thereto if there be general assignment proceedings, as a creditor protected by a public instrument (acreedor escriturario).

ART. 149. Records of voluntary mortgages can only be canceled in the manner prescribed by Article 82. If the persons who should make the cancellation oppose it, it may be decreed by the Court.

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ART. 150. When an annuity (censo) encumbered with a mortgage is redeemed, the mortgagee shall have a right to demand of the redeemer that he either pay his debt entirely, including the interest due and to become due, or that he recognize the mortgage on the estate encumbered by the annuity (censo).

ART. 151. In the latter case of the preceding Article, a new record of the mortgage shall be made, which shall clearly express its recognition by the redeemer, which shall be effectual from the date of the previous record.

ART. 152. A mortgage credit may be conveyed or assigned to a third person totally or partially, provided it is effected by means of a public instrument, notice of which is given to the debtor, and that it is recorded in the Registry.

The debtor shall not be bound by said contract to any greater extent than he was by his own.

The assignee shall be subrogated to all the rights of the assignor.

ART. 153. In a mortgage created to guarantee negotiable obligations or deeds to bearer, when the mortgage interest is alienated or assigned, it shall be understood that the latter is transferred together with the obligation or with the deed, it being unnecessary to give notice thereof to the debtor, or to record the transfer in the Registry.

ART. 154. If, in the cases where it is necessary, a notice to the debtor of the assignment of the mortgage debt is omitted, the assignor shall be responsible for any damage which the assignee may suffer in consequence of this omission.

ART. 155. The interests or debts secured by a legal mortgage can not be assigned until the time they are due, and the persons in whose names they stand, have the legal capacity to convey them.

ART. 156. A mortgage shall be effectual with regard to third parties until the record is canceled.

SECTION 3.—*Legal mortgages.*

ART. 157. Only those established in Article 168 are legal mortgages.

ART. 158. The persons in whose favor this law creates legal mortgages shall have no other right to demand the creation of a special mortgage sufficient to secure their interest.

ART. 159. To constitute a legal mortgage it is necessary that the document, by virtue of which it was created, has been recorded.

ART. 160. The persons in whose favor this law establishes legal mortgages may demand the constitution of a special mortgage on any real property or property rights possessed by the person who is obliged to make it, always provided it is mortgageable under this law.

They may also demand this mortgage at any time, even though if the reason on which it was founded has ceased, such as marriage, guardianship, minority, or administration, provided the obligation which was to be secured is not fulfilled.

ART. 161. After a legal mortgage has once been created and recorded it has the same effect as a voluntary mortgage without any other exceptions than those expressly specified in this law, whoever may be the person who is to exercise the rights conferred by said mortgage.

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ART. 162. If several estates are offered for the creation of a legal mortgage, and the interested persons do not agree to the amount which is to be secured by each, the Judge or Court shall decide in accordance with Article 119, after a report of experts.

The Judge or Court shall decide in the same manner questions arising among the interested parties as to the sufficiency of the estate offered for the creation of any legal mortgage.

ART. 163. Whenever the recorded legal mortgages become insufficient, the persons who, according to this law, have either the right or obligation to do so, may request the right or must demand the obligation of their sufficiency or amplification.

ART. 164. Recorded legal mortgages shall remain in force until the rights for the security of which they were created have been extinguished, and they shall be canceled in the same manner as voluntary mortgages.

ART. 165. To judicially constitute or amplify any legal mortgage at the instance of a litigant, the procedure shall be in accordance with the following rules:

1. Any person, who has a right to demand it, shall present a petition to the Judge or Court of the domicile of the person compelled to grant it, requesting that the mortgage be constituted, stating the amount for which it should be created, and stating what property may be thus encumbered, or at least indicating the Registry which should contain the record of the property which said person owns.

2. This petition must necessarily be accompanied by the deed or document giving rise to the right to a legal mortgage, and, if possible, a certificate from the Register in which shall be stated all the mortgageable property owned by the defendant.

3. The Judge or Court shall, in view of these papers, order to appear before it all the persons interested in the creation of the mortgage, so that they can agree, if it be possible, as to the manner of constituting it.

4. Should they come to an agreement, the Judge or Court shall order the mortgage created in the manner agreed upon.

5. Should they fail to agree, either as to the obligation to mortgage, or as to the amount which is to be secured, or as to the sufficiency of the mortgage offered, a copy of the petition shall be given the defendant, and the proceedings shall follow the course established for such cases in Articles 732 to 744 of the Law of Civil Procedure in force in the Philippines, and 748 to 760 of that in force in the Antilles.

ART. 166. In cases where the Judge or Court must proceed, by reason of a duty imposed, to demand the constitution of a legal mortgage, he shall order the proper Register to send him the certificate mentioned in Rule No. 2 of the preceding Article; in accordance thereto he shall order the person obligated to constitute the mortgage to appear before him, and with his consent and that of the Department of Public Prosecution he shall continue the proceedings in the manner prescribed.

ART. 167. The provisions contained in the two preceding Articles shall be understood without prejudice to the Regulations established for mortgages given to secure property, which is to be set apart, and the bonds of guardians, and shall not be applicable to a legal mortgage in favor of the State, provinces, or towns, except when the ad-

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ministrative regulations do not establish any other procedure by which they may be demanded.

ART. 168. A legal mortgage shall be made:

1. In favor of married women on the property of their husbands:

For the dowry which may have been formally delivered to them in the presence of a notary;

For gifts which said husbands may have offered them within the limits of the law;

For the personal property, in addition to the dowry, which the wives may have brought with them on their marriage, which, with the same formalities, they may have delivered to their husbands;

For any other property that the wives may have brought on their marriage and delivered to their husbands with the same formalities.

2. In favor of the relatives referred to in Article 811 of the Civil Code, on the property of the person who shall have the duty to do so, for the property which said article declares subject to be set apart; and in favor of the children, on the estates of their parents, for those which the latter must set apart for them according to the law, and for those which belong to said children while they are minors in charge of the father or mother, in case the latter should remarry.

3. In favor of the heirs of the deceased spouse on the property of the surviving one, for the share of the inheritance, the use of which the latter has a right to enjoy according to law, in case specific property passes into his or her possession for this purpose, in case of remarriage.

4. In favor of minors or incapacitated persons on the property of their guardians, for the amount the latter may have received from them and for the responsibility they incur, unless they give a bond for security instead of a mortgage bond.

5. In favor of the State, provinces, or towns, on the property of persons making contracts with them or administering their interests, for the liabilities which they incur in accordance with the law; on the property of taxpayers for the amount of an annual tax thereon, which has fallen due and has not been paid.

6. In favor of underwriters on property insured, for the insurance premiums for two years; and if the insurance is based on the mutual system, for the last two assessments which may have been declared.

DOWRY MORTGAGES.

ART. 169. The married woman in whose favor this law established the legal mortgage shall have a right to demand:

1. That the husband mortgage and record in the Registry in her name, all the real property and property rights which he may have received as appraised dowry or with the obligation of returning their value.

2. That all the other property which the husband receives unappraised and which he must return, in a proper case, be recorded in the Registry, if it has not already been done, as dowry, or personal property in addition to the dowry, or by whatever legal designation it may have.

3. That the husband secure, by means of a special sufficient mortgage, all other property not embraced in the preceding paragraphs, and which is delivered to him by reason of the marriage.

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ART. 170. The dowry admitted by the husband, the delivery of which is not certified to or only appears from a private document, shall have no other effect than that of a personal obligation.

ART. 171. Notwithstanding the provisions of the preceding article, a woman who may have a dowry acknowledged in her favor by the husband, before the celebration of the marriage, or within the first year thereafter, may at any time demand that the husband secure it by a mortgage in her favor, provided she legally proves the existence of the dowry property or other similar or equivalent property at the time of alleging her claim.

ART. 172. The real property or property rights which are delivered as an appraised dowry shall be recorded in the Registry of Property in the name of the husband in the same manner as any other acquisition of ownership, stating besides, in the record the amount of the dowry of which said property forms part, the amount at which it was appraised, and the dowry mortgage created thereon, provided the husband does not mortgage other property sufficient to secure the appraised value of the former.

ART. 173. If the woman has recorded in her name the real property which is to constitute the unappraised dowry, or the personal property in addition to the dowry, which she delivers to her husband, the proper character of either property shall be described in the Registry, a marginal note for this purpose being entered on said record of the property.

Should said property not be recorded in the name of the wife, it shall be entered in the usual form, stating in the record whether it is a dowry, or personal property in addition to the dowry.

ART. 174. When on recording appraised dowry property in the name of the husband, the Register is obliged to enter the mortgage in favor of the wife, and the deed which is presented be not sufficient for this purpose, he shall suspend the record and enter the necessary cautionary notice.

ART. 175. The legal mortgage created by the husband in favor of the wife shall guarantee the restitution of the property or its appraised value only in case such restitution takes place in accordance with the laws and with the limitations prescribed therein; and it shall cease to have effect, and may be canceled whenever for any legal cause the husband is exempted from the obligation to restore it.

ART. 176. The sum which must be secured by virtue of an appraised dowry shall in no case exceed the value of its appraisement; and if the value of said dowry is reduced because it exceeds the sum permitted by law, the mortgage shall likewise be reduced in the same proportion, after the proper partial cancellation has been made.

ART. 177. When an unappraised dowry is created on property other than real, it shall be appraised for the sole purpose of fixing the amount that the mortgage is to secure, in case said property does not exist at the time it should be restored, the dowry not losing thereby its character of being unappraised, if it was thus qualified in the dowry deed.

ART. 178. A mortgage to secure gifts by reason of marriage, shall only be made should they be offered by the husband as increasing the dowry. If they are offered without this requisite they shall constitute a personal obligation, the husband having the option of securing them by mortgage or not.

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ART. 179. The husband is not obliged to create a mortgage for the personal property in addition to the dowry of his wife, unless the latter is conveyed to him for his administration by a public instrument properly executed before a Notary.

ART. 180. To constitute the mortgage referred to in the preceding Article, the property shall be appraised or its value fixed by those who, according to this law, have a right to demand it and to determine its sufficiency.

ART. 181. Property brought in marriage, for the effects of the last paragraph of number 1 of Article 168, shall be understood to be such property which in any matter whatsoever, in accordance with local customs, the wife brings to the conjugal partnership, provided it is conveyed to the husband by means of a public instrument properly executed before a Notary for his administration, either by appraisement in view of its sale, or with the obligation of keeping it or returning it on the dissolution of the marriage.

When the delivery of the property mentioned in the preceding paragraph appears only by the acknowledgment of the husband, the creation of a dowry mortgage can not be demanded, except in the cases and manner prescribed by Article 171.

ART. 182. A married woman who is of age may herself demand the creation of the mortgage and record of property mentioned in Article 169.

If she has not as yet contracted the marriage, or if she has done so and is a minor, said right shall be exercised in her name and the sufficiency of the mortgage created shall be determined by the father, the mother, or the person who gives the dowry, or the property which should be secured.

ART. 183. In default of the persons mentioned in the preceding article, and the woman being a minor, whether married or single, the extension of these rights must be demanded by the guardian, his substitute, the family council, or any of its members.

ART. 184. If the guardian or his substitute, or the family council do not demand the creation of the mortgage, it shall be the duty of the Public Prosecutor to demand, or at the instance of any person, a demand may be made. to compel the husband to execute the same.

ART. 185. Municipal judges shall also have the obligation of inducing the Department of Public Prosecution to see that the provisions of the preceding Article are complied with.

ART. 186. If the husband does not possess any property with which to create the mortgage mentioned in number 3 of Article 169, he must create it on the first realty or property rights he may acquire; but this obligation can not prejudice a third person until the mortgage is recorded.

ART. 187. When the dowry consists of rents or perpetual annuities, and they are alienated, their restitution shall be secured by creating a mortgage for the principal represented by said rents or annuities capitalized at the legal rate of interest.

ART. 188. If the annuities referred to in the preceding Article are of a temporary character and could or should continue after the dissolution of the marriage, a mortgage shall be created for the amount agreed to between the husband and wife, and, should they not come to an agreement, for the amount fixed by the Judge or Court.

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ART. 189. The provisions of this law with regard to dowry mortgages do not alter or modify the provisions contained in Articles 880, 881, and 909 of the Code of Commerce.

MORTGAGES FOR PROPERTY TO BE SET APART.

ART. 190. The special mortgage, which minor children have a right to demand by reason of the property to be set apart, shall be created under the following conditions:

1. The father shall present to the Judge or Court an inventory and appraisement made by experts of the property which is to constitute the security, with a statement of the property which he offers for mortgage, accompanied by the title deeds proving his ownership thereof, and documents showing its value and its freedom from all incumbrances or specifying what liens exist thereon.

2. If the Judge or Court considers the account of the property correct, and the mortgage offered sufficient, a memorandum shall be issued in the proceedings, declaring what realty is set apart, so that this reservation may be embraced in the proper records of ownership, and shall create the mortgage for the value of the rest of the property subject to be set apart on that under the absolute ownership of the father, which is offered as security.

3. Should the Judge or Court be in doubt as to the sufficiency of the mortgage offered by the father, he may order the latter to take the necessary steps or present the documents which he may deem necessary to prove its sufficiency.

4. Should the mortgage not be sufficient, and should the father have other property on which it can be created, the Judge or Court shall order it to be extended to such property as, in his judgment, is sufficient to secure the rights of the child. Should the father not possess any other property, the Judge or Court shall order it created on the property offered, but shall express in the decree that it is not sufficient and declare the obligation of the father to extend it to the first realty he may acquire.

5. The memorandum mentioned in number 2 of this Article shall contain all the details which a mortgage record should embrace, and shall be signed by the father, certified by the Clerk of the Court, and approved by the Judge or Court.

6. By means of the presentation to the Registry, of a copy of this memorandum, and of the decree of its judicial approval, the proper record and entry shall be made to certify that the property may be set apart to constitute the mortgage mentioned in number 2.

ART. 191. If ninety days elapse and the father has not presented to the Judge or Court, the record of the proceedings mentioned in the preceding Article, the fulfillment thereof may be demanded by relatives, whatever may be their degree, by the executor of the deceased spouse, or in default by the Department of Public Prosecution.

ART. 192. The period of ninety days mentioned in the preceding paragraph shall be computed from the time that the property should be set apart, on account of the contraction of a second or subsequent marriage.

ART. 193. If two or more of the persons mentioned in Article 191, apply for the creation of the legal mortgage, preference shall be given to the one making the first application.

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ART. 194. Should the children be of age, only they themselves can demand the creation of the mortgage in their favor.

ART. 195. The Judge or Court which approved the record of proceedings mentioned in Article 190 shall see, under his or its responsibility, that the records and entries prescribed by number 6 of the same Article are duly made.

ART. 196. Should the father not have any mortgageable property, the proceedings provided in Article 190, shall also be instituted for the sole purpose of recording what is set apart and its value.

ART. 197. The decree issued in the case of the preceding Article shall only express what is necessary, regarding what is set apart and its value, and the obligation of the father to mortgage the first realty he may acquire.

If the property set apart consists of realty, the Judge or Court shall order that its classification be entered in the Registry in the manner prescribed by Article 173.

ART. 198. The mother shall give security for the rights of her children to the property set apart, with the same formalities as the father.

ART. 199. The special mortgage to secure the property set apart, established by Article 811 of the Civil Code, may only be demanded by the relatives in whose favor the property is to be set apart, should they be of age. If they are minors, the persons who legally represent them shall demand it in their name. In either case, the interest of the persons in whose favor the property is to be set apart, shall be secured, with the same requisites mentioned in the preceding Articles, including, with regard to the property to be set apart, the provisions relating to the father.

MORTGAGES OF PROPERTY OF PERSONS STILL UNDER PARENTAL AUTHORITY.

ART. 200. The father, or when there is none, the mother, is the legal administrator of the property of the children who are still under his or her authority, although with the obligation of creating a legal mortgage in favor of the latter, should he or she contract a second marriage.

ART. 201. The children in whose favor legal mortgages are established by the preceding Article, shall have a right to demand:

1. That the realty belonging to them be recorded in their name, if this has not already been done.
2. That the father, or, in a proper case, the mother, secure by a special mortgage, if it can be done, the property other than realty, belonging to the said children.

ART. 202. It shall be understood that the father, or, in a proper case, the mother, can not create the mortgages mentioned in the preceding Article, should they not have any mortgageable real property.

ART. 203. If the real property which the parents possess is insufficient, they shall, however, create a mortgage thereon, without prejudice to its extension to other property which they may subsequently acquire, should they be required to do so.

ART. 204. The extension of the rights mentioned in Article 201 may be demanded in the name of the children by:

1. The persons from whom the property is derived.
2. The heirs or executors of said persons.
3. The ascendents of the minor.

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ART. 205. Neither the father, or, in a proper case, the mother, can convey the real property belonging to the child, of which they enjoy the use or administration; nor can they encumber it, except for justified reasons of profit or necessity, and with the previous authority of the Judge of the District, on hearing the Department of Public Prosecution.

ART. 206. In case the persons mentioned in Article 204 do not demand that the rights expressed in Article 201 be accorded, the Public Prosecutor may do so by reason of his duty.

MORTGAGES BY REASON OF GUARDIANSHIP.

ART. 207. The guardian, before his charge is conveyed to him, and to insure a good result from his administration, shall give a bond, which must be either a mortgage or a bond for security.

ART. 208. The mortgage bond shall be entered in the Registry of Property.

ART. 209. Pending the execution of the bond, the substitute of the guardian shall exercise all the administrative acts, which the family council may consider indispensable for the preservation of the property, and to collect the income therefrom.

ART. 210. The record of the mortgage bond, when such bonds are given, must be demanded by:

1. The guardian.
2. The substitute of the guardian.
3. Any member of the family council.

ART. 211. The persons omitting the formalities mentioned in the preceding article shall be responsible for any loss or damage.

ART. 212. A mortgage bond must secure:

1. The value of the personal property which comes into the hands of the guardian.
2. The rents or income which the property of the minor or incapacitated person yields during the period of one year.
3. The profit which the minor may receive during one year from any mercantile or industrial enterprise.

ART. 213. The family council is charged with the duty of fixing the amount of the mortgage bond and its determination.

ART. 214. A mortgage bond may be increased or reduced during the exercise of the guardianship, according to the changes in the value of the property of the minor or incapacitated person.

ART. 215. A mortgage bond can not be totally canceled until after the accounts of the guardianship have been approved, and the guardian has satisfied all the responsibilities of his administration.

ART. 216. The following are exempted from giving security as guardians:

1. The father, the mother, and the grandparents in case they are called upon to assume the guardianship of their descendants.
2. The testamentary guardian relieved from this obligation by the father, or, in a proper case, by the mother. This exemption shall cease when subsequently to his appointment, reasons arise unknown by the testator, which should make the giving of a bond indispensable, in the opinion of the family council.
3. A guardian appointed and exempted from giving bond by strangers, who may have made the minor or incapacitated person their heir

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or left them an important legacy. In this case the exemption shall be confined to the property or income of which the inheritance or legacy consists.

OF OTHER LEGAL MORTGAGES.

ART. 217. The competent official shall require the creation of special mortgages on the property of persons administering public funds or who have made contracts with the State, provinces, or towns, in all the cases, and in the manner prescribed by the administrative regulations.

ART. 218. The State, province, or towns shall be preferred to any other creditor in the recovery of one year's taxes on the realty.

To secure a like preference for a larger sum than that represented by said taxes, the State may require a special mortgage, in the form prescribed by the administrative regulations.

ART. 219. The person insuring real property shall have a right to require a special mortgage on the property insured, the owner of which has not satisfied the insurance premiums for two or more years, or two or more of the last assessments, if the insurance is based on the mutual system.

ART. 220. While the premiums for the last two years, or, in a proper case, the last two assessments are not paid, the claim of the insurer shall have preference over any other claims.

ART. 221. When the two assessments or premiums referred to in the two preceding Articles are due and have not been satisfied, a mortgage shall be created for the whole sum that is due, and the entry thereof shall be effectual only from its date.

TITLE VI.—OF THE MANNER OF KEEPING THE REGISTERS.

ART. 222. The registry of property shall be kept in books folioed and rubricated by the Judges of First Instance of a subdistrict, or by the Municipal Judges delegate for the inspection of Registries.

ART. 223. The books mentioned in the preceding Article shall be uniform for all Registries, and shall be formed under the direction of the Colonial Department, with all precautions necessary for the prevention of any fraud or forgery which might be committed therein.

ART. 224. The only books valid shall be those made by the Registers, in accordance with the provisions of the preceding Article.

ART. 225. The books of the Registry can for no reason whatsoever be removed from the office of the Register. All judicial or extrajudicial proceedings requiring the exhibition of said books shall be held in the office itself.

ART. 226. The books shall be numbered in their chronological order.

ART. 227. The Registry of property shall embrace records or entry cautionary notices, cancellations, and notes of all documents subject to record according to Articles 2 and 5.

ART. 228. The Registry of property shall be kept by opening a special record for each estate in the proper book, entering as the first record thereof the first one which is demanded with relation to said property, provided it refers to transfer of property.

When the first entry that is demanded is not of this kind, the last record of ownership which may have been made in the old books shall be transferred to the new ones, in favor of the owner of the property

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encumbered by the new record. All subsequent records, entries, and cancellations shall be made immediately following each other, without leaving any blank space between them.

ART. 229. The entries relating to each estate shall be numbered in their proper order and signed by the Register.

ART. 230. One book shall be opened for each municipal district wholly or partially included within the jurisdiction of a Register.

ART. 231. The books of each municipal district shall have a special numeration in proper order, besides that mentioned in Article 226.

ART. 232. The Government may order, for reasons of public convenience, that a municipal district be subdivided into two or more sections, and that a Registry book be opened for each one of them.

ART. 233. In the case mentioned in the preceding article, to the numeration which the books must have, according to Articles 226 and 231, shall be added the words "Section First" or "Section Second," or the proper one.

ART. 234. When a deed embraces several real properties or property rights located within one municipal district, the first entry made shall contain all the details prescribed by Article 9, and in the following ones the estate only shall be described, should it be necessary, or the property right which is the subject of each of them shall be described, and the nature of the instrument or contract shall be stated, the names of the grantor and of the grantee, the date and town where the instrument was executed, and the name of the Notary who authenticated it, or of the official who executed it, making reference for all other details to said first record, stating the liber and folio containing it.

ART. 235. If the instrument referred to in the preceding Article is one creating a mortgage, the record must express, besides the details prescribed in said Article, the part of the debt for which each estate or interest is liable.

ART. 236. If the property or interests contained in one deed are located in two or more municipal districts, the provisions contained in the two preceding articles shall be applied to each of said districts.

If any of the latter have been divided into sections, in accordance with the provisions of Article 232, each section shall be considered as if it were a municipal district.

ART. 237. The Register shall authenticate, with his signature in full, the entries of presentation contained in the Day Book, as well as the records, cautionary notices and cancellations, and the notes, with an abbreviation of his name.

ART. 238. Registers shall also keep a book called a Day Book, in which they shall make a brief entry of the contents of every document at the time of its presentation.

ART. 239. The entries in the Day Book shall be numbered in proper order at the time of their inscription.

ART. 240. The entries mentioned in the preceding Article shall be made in the order in which the documents are presented, without leaving any blank space between them, and shall contain:

1. The name, surname, and residence of the person presenting the document.

2. The hour of its presentation.

3. The character of the document presented, its date, and the official or notary subscribing it.

4. The character of the interest created, conveyed, modified, or abrogated by the document to be recorded.

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5. The nature of the estate or property right which is the subject of the document presented, with a statement of its location, its name, and its number, should it have any.

6. The name and surname of the person in whose favor the record is desired.

7. The signature of the Register and of the person who presents the document, or of a witness, should that person not be able to sign.

ART. 241. When the Register makes the record, cautionary notice, or cancellation to which the entry of presentation refers, in the proper book, he shall state this fact by means of a marginal note opposite said entry of presentation, stating the volume and folio where the former may be found, as well as the number of the estate according to the Registry and the number given to the requested record.

ART. 242. Every day not a working day, at the time previously indicated at which the Registry is to be closed in the manner prescribed by the Regulations, the Day Book shall be closed by a memorandum executed by the Register, immediately after the last entry he may have made. Mention shall be made therein of the number of entries executed during the day, or if none have been made, this fact shall also be stated.

If the time for closing the Registry should arrive before an entry is terminated, it shall be continued until its conclusion, but without, however, admitting any other document in the meantime and stating this circumstance in the final memorandum.

ART. 243. Entries of presentation made after the office hours of the Registry shall be null.

ART. 244. At the foot of any document recorded in the Registry of property, the Register shall affix a note, signed by himself, expressing the kind of entry which has been made, the liber and folio containing it, the number of the estate, and the number of the record made.

ART. 245. No entry shall be made in the Registry of property until the fees established or to be established by law are previously paid, should any be due for the instrument or contract to be recorded.

ART. 246. Notwithstanding the provisions of the preceding Article, the entry of presentation may be made before the payment of the fees; but, in such case, the entry shall be suspended and the document shall be returned to the person who presented it, so that, after its examination, he may liquidate and satisfy said fees.

When these have been paid the interested person shall return the document to the Registry, and the record shall be made, the effects of which shall retroact to the date of the entry of presentation, provided the deed has been returned within the thirty days immediately following the date of said entry.

If the deed is returned after said thirty days have elapsed, a new entry of presentation shall be required, and the effects of the entry made shall retroact to the date of the new entry. In case the fees have not been paid because the office or official having in charge their liquidation or collection, has consulted with his superiors as to some doubtful question regarding the case, the period of thirty days shall be suspended from the time of said consultation, until the matter is definitely settled, which circumstance shall be stated in a marginal note opposite the entry of presentation, the document which the in-

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terested party must present to the Register being seen by the latter, provided this officer is not certain as to the fact.

ART. 247. The liquidation of the fees which must be paid in each case shall be made through the proper office or official in the manner prescribed by the Regulations.

ART. 248. Receipts for fees collected for instruments and contracts subject to record, shall be made n duplicate, and both copies shall be delivered to the person making the payment. One of these copies shall be presented to the Register, who shall file it in his office.

The Register who should not preserve said copy shall be directly liable to the Treasury for the fees which may not have been liquidated.

ART. 249. In order that any entry may be made in the Registry by virtue of a judicial decree, the Judge or Court shall issue the proper order in duplicate.

The Register shall return one of the copies to the same Judge or Court from whom it was received, or to the interested party who may have presented it, with a note signed by him, stating that it has been complied with, and keeping the other one in his office, making thereon a rubricated memorandum similar to the one made on the copy returned. The documents shall be filed in one package, numbered in the order of their presentation.

ART. 250. To totally or partially cancel a mortgage, the document by virtue of which it is to be made shall be presented, as well as the instrument creating it, which shows that it has been recorded. On both documents a memorandum shall be made stating that the cancellation and its entry have been executed in accordance with Article 244.

In order that the persons interested in the cancellations may not be deprived of the document, when it is a public instrument, a copy on common paper shall be presented therewith, signed by said persons. After being compared by the Register he shall state its conformity with the original, by means of a memorandum, filing it and returning the original to the interested person.

Registers shall preserve in their chronological order in numbered packages the documents by virtue of which any mortgage is canceled.

ART. 251. Any other documents which may be presented to the Register, shall be returned to the interested parties with the memorandum mentioned in Article 244 affixed thereto, after the proper use thereof has been made.

ART. 252. The persons interested in a record, cautionary notice, or cancellation may demand that before the principal entry thereof is made in the book a draft of said entry be shown them.

Should they note any error or important omission they may demand its correction, applying to the President of the Audiencia or to his representative, should the Register refuse to comply.

The President of the Audiencia or his representative shall decide what is necessary, without any formal proceedings and within the period of six days.

ART. 253. Whenever the interested person has had notice of the draft in the manner prescribed in the preceding Article, and he expresses his satisfaction therewith, or, in default thereof, the President of the Audiencia should decide the form in which it should be made, either circumstance shall be mentioned in the proper entry.

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TITLE VII.—OF THE CORRECTION OF ENTRIES IN REGISTRIES.

ART. 254. Registers may themselves correct, on their own responsibility, any material errors committed—

1. In the entries of principal records, cautionary notices, or cancellations, the respective documents being on file in the office.

2. In entries of presentation, marginal notes, and notes of references, although the documents are not on file in the office of the registry, provided the respective principal record is sufficient to show the error, and that it is possible to correct it in accordance therewith.

ART. 255. Registers can not correct material errors committed without the consent of the interested party possessing the recorded document, or in default thereof, without a judicial decree, in the following cases:

1. In records, cautionary notices, or cancellations, the documents of which are not on file in the office of the Registry.

2. In entries of presentation and notes, when said errors can not be proved by the respective principal records, and the documents are not on file in the office of the Registry.

ART. 256. Errors of judgment committed in entries, records, or cancellations, or in any other entries referring thereto, when they do not clearly appear from the same, shall not be corrected without the unanimous consent of all the interested parties and of the Register, or without a judicial decree ordering it.

The same errors committed in entries of presentation and notes may be corrected by the Register himself, when the respective principal record suffices to expose them.

ART. 257. The Register, or any of the persons interested in an entry, may oppose the correction which another person requests on account of an error of judgment, provided that in his opinion the judgment considered incorrect be in acordance with the deed to which the entry refers.

The question arising in this conection shall be decided by a declaratory suit.

ART. 258. When the errors, material or of judgment, produce the nullity of the record, in accordance with Article 30, they can not be corrected, and the nullity thereof shall be demanded and declared by the proper Court in the suit instituted for this purpose.

ART. 259. A material error shall be considered committed for the purpose of the preceding Articles, when some words are unintentionally written for others, when the statement of some detail is omitted not causing its nullity, or when mistakes are made as to surnames or amounts in transcribing them from the documents, without thereby changing the general sense of the record or any of its parts.

ART. 260. An error of judgment shall be considered committed when, in expressing in the entry matters contained in the deed, their sense is altered or varied, this error not necessarily producing nullity in accordance with the provisions of Article 30.

ART. 261. Material errors which are committed in the writing of entries can not be remedied by means of corrections, scratches or erasures, nor by any other means except by a new entry, in which the error committed in the first one shall be clearly stated and corrected.

ART. 262. Errors in judgment shall be corrected by means of a new

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entry, which shall be executed by the presentation of the document already recorded if the Register acknowledges his error or if the Judge or Court declares it; and by virtue of a new document if the error is caused by the vague, ambiguous, or incorrect language of the original deed, and the parties agree thereto, or it is so ordered by a judicial decree.

ART. 263. Whenever a correction is necessary on account of an error of any kind committed by the Register, and it can be made by virtue of the same document previously presented, all the expense and damages caused shall be defrayed by the Register who committed the error. Should the one who committed said error not be the same one making the correction, the latter may demand of the former the payment of the corresponding fees, according to the schedule in force, for the new record and other work.

If to make the correction a new document is necessary all expenses shall be defrayed by the persons interested.

ART. 264. The corrected part shall only be effectual from the date of its correction, without prejudice to possible rights of third persons to institute proceedings on account of the falsity or nullity of the document to which the entry refers, which contained the error of judgment, or on account of the entry itself.

TITLE VIII.—ADMINISTRATION AND INSPECTION OF REGISTRIES.

ART. 265. Registries of property shall be under the jurisdiction of the Colonial Department, and their affairs, as well as those of the Notaries, Civil and Marriage registry, and Mercantile registry, shall be in charge of the Registry and Notarial Division established by this law.

ART. 266. The personnel of the Division mentioned in the preceding Article shall consist of one chief, at an annual salary of 10,000 pesetas; two clerks, one first, at 8,700, and one second, at 7,500; three assistants, one first, at 6,000 pesetas, one second, at 5,000, and one third, at 4,000.

Said Division shall also have four copyists: Two first, at an annual salary of 2,000 pesetas, and two second, at 1,500.

Vacancies in the positions of chief, clerks, and assistants shall be filled strictly by promotion, in accordance with the grades previously established, and those of the lowest assistants by competitive examination. The vacancies in the positions of copyists shall be filled in the same manner. The Government may, reserving the privileges which this paragraph provides, in case of vacancies, for the good of the service and with the consent of the full Council of State, abolish one or more of the positions in the Division; the persons filling the same to receive two-thirds of the salary they were receiving until they are reinstated with the same salary and privileges.

ART. 267. The officials of the Division can not be removed by the Government without just cause, with reference to the fulfillment of the duties of their positions, by virtue of proceedings instituted for this purpose and after consulting the corresponding Division of the Council of State. An opportunity must be given the interested party to make an explanation in writing regarding the matter which gave rise to the proceedings.

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ART. 268. It shall be the duty of the Registry and Notarial Division:

1. To transact, directly with the Colonial Minister and through the Chief of said Division, all business within its jurisdiction, and to propose the measures necessary to consolidate the Registries of Property in the colonies and for the faithful observance of this law and of the regulations which may be enacted for its execution.

2. To execute such papers as may be prepared to fill vacant Registries, and for the holding of competitive examinations, when they are necessary, as well as those for the discharge of employees of the Division, or of Registers making the final disposition necessary in each case in accordance with the law.

3. To decide administrative appeals on the determination of documents made by Registers and the doubts which arise in the minds of said officials regarding the interpretation and execution of this law or of the regulations, provided they do not require dispositions of a general character which must be made by the Secretary of the Colonies.

4. To form and publish statements relating to transfers of property, in accordance with the data received from the Registers.

5. To exercise a general inspection and supervision of all the Registries in the Colonies, through the Presidents of the proper Audiencias, and even through Judges of First Instance, or Municipal Judges delegated to the inspection of Registries, and through the Registers themselves, when it is deemed advisable for the good of the service.

The other duties of the Division shall be determined by the Regulations.

ART. 269. The Presidents of Audiencias shall be inspectors of the Registries within their jurisdiction and shall immediately exercise such functions through the Judges of First Instance of the respective subdistricts, or, where this is not practicable, through the Municipal Judges, who may be delegated for this purpose.

In towns where there is more than one Court of First Instance the Judge designated by the President of the Audiencia shall exercise the functions mentioned.

ART. 270. The President of the Audiencia or his delegates shall inspect the Registries the last day of each quarter, making a memorandum of the condition in which they were found.

The Presidents of Audiencias may, besides the quarterly inspection, personally or through their delegates make any extraordinary inspection they may deem advisable, either to inspect the whole Registry or only certain of its books.

For the extraordinary inspections the Presidents of Audiencias may delegate their functions, if they deem it necessary, to an Associate Justice of the Audiencia or to a Judge of First Instance, when the usual delegate is a Municipal Judge.

ART. 271. The delegates shall transmit to the Presidents of Audiencias the statements mentioned in the first paragraph of Article 270 within three days following the termination of their inspection.

ART. 272. The Presidents of Audiencias shall transmit to the Colonial Department every six months a detailed report of the condition of the Registries which are subject to their inspection and authority.

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ART. 273. Should the Presidents of Audiencias note any lack of formalities on the part of the Registers in the conduct of the Registries, or any infraction of the law or of the regulations for their execution, they shall take the steps requisite for their correction, and, in a proper case, punish them in accordance with the provisions of the same law.

If the error or infraction could be qualified as a crime, the culprit shall be placed at the disposal of the Courts.

ART. 274. Should the President of an Audiencia find that a Register has not furnished bond, or has not deposited a quarter of his fees in accordance with the provisions of Article 305, he shall immediately suspend him.

ART. 275. Should the President of an Audiencia suspend any Register he shall appoint another to temporarily fill the office, and shall give a report showing the reasons of his action to the Colonial Department.

ART. 276. Registers shall consult directly with the President of an Audiencia, or with the Judge of First Instance, concerning any doubt they may entertain as to the interpretation and execution of this law, or of the regulations which may be enacted for its application.

Should the Judge of First Instance entertain any doubt as to the decision of the question, he shall forward it, together with his report, to the President of the Audiencia.

Should the President of the Audiencia also be in doubt as to the decision of the question submitted by the Judge of First Instance or by the Register, he shall forward it to the Colonial Department.

ART. 277. Whenever the doubt which gave rise to the question of the Register prevents the entry of some principal record in the Registry of Property, a cautionary notice shall be made thereof, which shall have all the effects mentioned in the ninth paragraph of Article 42.

The decision of the question, in such case, shall be transmitted directly to the Register within the sixty days provided in paragraph 96 for the duration of said entries.

Should said decision not be transmitted within the sixty days, the notice shall continue its effect.

ART. 278. No fee shall be charged to the interested party for entering the cautionary notice mentioned in the preceding Article.

TITLE IX.—PUBLICITY OF REGISTRIES.

ART. 279. Registries shall be open to those who are known to have any interest in ascertaining the status of the real property or property rights entered or recorded.

ART. 280. Registers shall exhibit the books in a convenient place for persons who may wish to consult them, without taking them from the office and with the precautions necessary to insure their preservation.

ART. 281. Registers shall issue certificates:

1. Of entries of all kinds contained in the Registry relating to property indicated by the persons interested.

2. Of certain records which the said persons may indicate, either specifying them or referring to those of one kind or another which may exist in relation to certain property.

3. Of mortgage records and cancellations thereof made at the instance or in favor of said persons.

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4. Of the non-existence of a record of any kind or of a particular kind, relating to specified property or in charge of certain persons.

ART. 282. The certificates mentioned in the preceding Article may refer to a fixed and stated period, or to everything that may have been filed since the original establishment of the said Registry.

ART. 283. The freedom or encumbrance of real property or property rights can only be proven to the prejudice of third persons by the certificates mentioned in the foregoing Article.

ART. 284. When the certificates mentioned in Article 281 are not in conformity with the records to which they refer, the latter shall be preferred, reserving the action which the person prejudiced thereby may bring to recover the proper indemnity from the Register who committed the error.

ART. 285. Registers shall not issue the certificates mentioned in the preceding Articles, except at the written request of the person who may have any interest in ascertaining the status of the realty or of the property right in question, or by virtue of a judicial order.

ART. 286. Should the Register refuse to exhibit the books or to give certificates of entries contained therein, the person who requested it may appeal to the President of the Audiencia, if he resides in the same place, or to the person delegated for the inspection of the Registry. The President of the Audiencia or his delegate shall decide after hearing the Register. If the decision is rendered by the delegate, an appeal lies to the President of the Audiencia.

ART. 287. The petitions of the interested parties and the mandates of the Judges or Courts, by virtue of which the Registers are compelled to issue certificates, must very clearly express:

1. The character of certificate demanded in accordance with Article 281, and if it is to be a literal one or an abstract.

2. The information, according to the character of such certificate, sufficient to indicate to the Register the property of persons in question.

3. The period to which the certificate should be limited.

ART. 288. Certificates shall be given of the entries in the Registry of property.

They shall be given of the entries in the Day Book also, if at the time of their issue there be any awaiting inscription in said Registry, which should be embraced in the certificate requested, and if it is a question of proving that some estate is free of encumbrances or that some interest does not in fact exist.

ART. 289. Registers shall not issue certificates of entries in the Day Book unless the Judge or Court so order, or unless it is expressly requested by the interested parties.

ART. 290. Certificates shall be literal or abstract, according as they may be ordered or requested.

Literal certificates shall consist of the respective records in full.

Certificates in abstract shall state all the circumstances contained in said records which are necessary for their validity, according to Article 30, as well as the incumbrances which at the time are a lien on the realty or recorded interest, according to the proper entry, and any other point which the interested party may designate or which is considered important by the Register.

ART. 291. Registers, after examining the books, shall issue their certificates only regarding the property, persons, or periods designated

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in the petition or mandate, without making reference to any other entries or details than the ones demanded, with the exceptions contained in the second paragraph of Article 288 and in Article 292, but, nevertheless, without omitting any which may be considered embraced in the terms of said mandate or request.

ART. 292. When a certificate of any given record is demanded or ordered, either literal or abstract, and the entry indicated has been canceled, the Register shall make a literal copy of the entry by virtue of which the cancellation took place.

ART. 293. When a certificate of encumbrances on realty is requested, and no encumbrance appears in the Registry in force at the time or made by the person designated, the Register shall state this fact.

If any encumbrance does exist, he shall copy it literally or in abstract, in accordance with the provisions of Article 290, and shall then add that no other encumbrance appears to be in force.

ART. 294. Should the Register be in doubt as to whether some record is in force, being doubtful also as to the validity or efficiency of the cancellation referring thereto, he shall copy both entries in the certificate, *verbatim*, whatever may be the form of the latter, stating that this was done in view of a doubt as to whether said cancellation had all the conditions necessary to produce its legal effects, and also his reasons for the doubt.

ART. 295. Registers shall issue the certificate demanded of them, in the shortest possible time, but never exceeding four days for each estate, records, or condition of the estate whether free or encumbered, which are to be certified to.

ART. 296. After the period mentioned in the preceding Article has elapsed, the interested persons may apply to the President of the Audiencia or to his delegate requesting that the delay be justified and proceeding in accordance with the provisions of Article 286.

TITLE X.—APPOINTMENT, QUALIFICATIONS, AND DUTIES OF REGISTERS.

ART. 297. Every Registry of property shall be in charge of a Register.

Registers of property shall be considered public officers for all legal effects and shall be addressed as "Excellency."

They may be retired with pension at their own request on account of physical disability, duly proven, or after reaching the age of sixty-five years. After reaching the age of seventy years said retirement with pension shall be compulsory. In their classification the time they have filled the office of Register and eight years more by virtue of their profession shall be taken into account. As the regulating salary, in the absence of a higher one, for the determination of a pension, in the declaration of pensions for old age, widowhood, and orphanage, there shall be assigned those designated to Chiefs of Administration of the third class for Registers of the first class, and to Chiefs of Bureaus of the first and second classes for the Registers of the second and third classes, respectively.

The Secretary, after a report from the Registry and Notarial Division, may grant leaves of absence for a period not to exceed five years to the Registers who may request it. The first vacancy which occurs in their class at the expiration of their leave shall be filled by any Register whose leave of absence has expired, and in case he should not accept the position he shall be definitely dropped from the Corps.

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The officials of the Registry and Notarial Division having been placed on the same basis as Registers of property for the purposes of Rules 1 and 2 of Article 303, the provisions of the two foregoing paragraphs shall also apply to them; it being understood that in cases of leaves of absence they shall still be kept on the rolls of the Division as supernumeraries, being promoted as if they were rendering active service, and at the expiration of their leave, occupying the first vacancy in the class they belong to, according to said rolls.

They shall also be considered as on leave should they be elected Deputies or Senators during their term of office and with the privileges allowed them in case their positions are abolished according to Article 266.

Any Register who resigns without just cause or who is removed in accordance with the provisions of Article 308, shall have no right to the privileges mentioned in the third paragraph of this Article.

Registers who cease to perform their duties because of the change or abolition of the Registry, and who are not immediately placed in another of the same or of a higher class, shall be considered as on leave of absence, and may be classified as a "cesante" (dismissed for political or economical reasons, but continuing to draw a salary), giving him credit for the time he had charge of the Registry. If, according to the time computed, he should be entitled to pay or to a temporary pension (cesantía) in accordance with the regulations governing retired classes, he shall receive the salary corresponding to his years of service and the regulating salary which he may have received or the one previously stated. If the Register on leave is appointed to another Registry of the same or of a higher class and he resigns without cause, he shall lose the time credited to him by virtue of his service in this profession, and shall therefore not receive the salary or increase of temporary pension thereof which he would have had a right to in consequence of this time.

Registers can not exchange their positions except with other Registers of the same or of the next lower class, and only when a good reason exists therefor in the judgment of the Government.

To ascend a class by exchange it is indispensable to have served in the next lower one four years or to have entered it by means of a competitive examination.

ART. 298. To be appointed Register it is necessary:

1. To be a Spaniard and a layman.
2. To be over twenty-five years of age.
3. To be a lawyer.

ART. 299. The following can not be appointed Registers:

1. Insolvents or bankrupts who have not yet received their discharge.
2. Debtors to the State or to public funds as taxpayers or in the settlement of their accounts.
3. Persons accused of crime, pending their trial.
4. Persons sentenced to correctional or punitive penalties, until they obtain their rehabilitation.

Registers who come under case 3 of this Article can not take part in the competitive examinations mentioned in rule No. 1 of Article 303.

ART. 300. The office of Register shall be incompatible with that of Senator, Deputy to the Cortes, Provincial Deputy, Municipal Judge,

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or Assessor, when acting in the capacity of Judge of First Instance, Mayor, or Member of a Municipal Council, Notary, and with any office or employment which carries with it similar jurisdiction, or is paid from State, Provincial, or Municipal Funds.

ART. 301. Each Registry shall have such clerks and assistants as the Register shall need, appoint, and pay, who shall discharge the duties assigned them by the Register, but under his sole and exclusive responsibility.

ART. 302. Registers shall be appointed by the Colonial Department.

ART. 303. Vacancies in the office of Registers of property which occur in the Colonies shall be filled in accordance with the following rules:

1. Every three vacancies occurring shall be filled by Colonial and Peninsular Registers; the first shall be filled by the Register of the highest class, and the senior one in service from among the candidates; the second by the Register whom among the candidates is the senior, without regard to class; the third by the Register of a higher, equal, or the next lower class to the Registry which is to be filled, whom the Government selects, taking into consideration the qualifications of the candidates. No Register can, in competition with others having legal conditions, receive two promotions as to class in order of merit, without two years elapsing between each promotion, unless he renders a new important service well known to be worthy of immediate reward.

2. If there be no Registers of the classes mentioned in the preceding paragraphs, the vacancy may be filled by any person selected by the Government, taking into account their qualifications.

3. Registers of property who have been disciplined and deprived of promotion can in no case attain a higher class nor even be transferred to another of the same class during the time of the duration of their punishment.

4. Registries which are vacant, and have been announced in their proper order and are not desired by licensed Registers, shall be filled by means of competitive examinations, two places for these examinations being established, one in the capital of Cuba, Puerto Rico, or the Philippines, in whichever of these islands the vacancy has occurred, and another in the capital of Spain.

ART. 304. Persons who have been appointed Registers can not take possession of their office without previously giving bond, the amount of which shall be fixed by the Regulations.

ART. 305. If the person who has been appointed Register does not give the bond mentioned in the preceding paragraph, he must deposit in the official establishment authorized by law to receive such deposits a quarter of his fees until the amount of the bond required is deposited.

ART. 306. The deposit or, in a proper case, the bond mentioned in the preceding Article shall not be returned to the Register until three years after he has ceased to discharge his duties, during which time the Judge of First Instance of the proper subdistrict shall make the announcement in the official papers of the respective colony, and in the "Gaceta de Madrid," so that it shall reach all persons who may have some action they may wish to bring against said Register.[a]

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[a] See Official Gazette, P. R., No. 65, March 17, 1899.

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ART. 307. The bond of Registers and, in a proper case, the deposit shall be subject, until it is restored, to the liabilities incurred by them by virtue of their office, which shall have preference over any other obligations of said Registers.

ART. 308. Registers can not be removed nor transferred to other Registries against their will, except by virtue of a judicial order, or by the Government in accordance with proceedings instituted by the President of the Audiencia, after hearing the interested party and a report from the Judge of First Instance of the subdistrict.

To permit the removal or transfer by the Government the proceedings must show that some wrong has been committed by the Register in the fulfillment of his duties, or which lowers him in the eyes of the public, and the proper Division of the Council of State shall also be heard.

ART. 309. As soon as Registers take possession of their office they shall propose to the President of the Audiencia the appointment of a substitute to take their place during their absence or illness, having the right to select for this position either one of the officials of the Registry or any other person in whom they have confidence.

If the President of the Audiencia is satisfied with the person proposed he shall immediately appoint the substitute. Should he be not satisfied, because of some serious reason, he shall order the Register to propose some other person.

The substitute shall discharge his duties under the responsibility of the Register, and shall be removed at any time the latter may request it.

ART. 310. Registers shall at the end of each year make six detailed statements:

The first, of alienation of realty made during the year, their liquidated prices, and the fees paid on them into the Public Treasury.

The second, of rights of use, use and occupancy, servitude, annuities (censos), or any other property rights in realty, with the exception of mortgages, their value in principal and income, and the fees paid on them into the Public Treasury.

The third, of mortgages created, number of estates mortgaged, amount of the principal secured thereby, the cancellations of mortgages which have taken place, number of estates released, amount of capital returned, and fees paid into the Public Treasury.

The fourth, of loans, notwithstanding that they have been embraced in the preceding statement by reason of being mortgage loans, their number, amount of principal loaned, and interest stipulated and fees paid into the Public Treasury.

The fifth, of the estates the ownership or possession of which has been recorded in the Registry for the first time, their value, if it appears, and their superficial area.

The sixth, of the number of documents presented, old and new, proceedings instituted, certificates issued, and fees received for all the services rendered.

The regulations shall contain the other requirements which said statements must contain, and the manner of drafting them.

ART. 311. Registers shall transmit the statements mentioned in the preceding Article to the Presidents of Audiencias before the 1st day

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of April, who shall forward them to the Colonial Department before the 1st day of June, with such remarks as they may deem proper.

ART. 312. Registers shall receive the fees which are established by this law, and shall pay the expenses of keeping and conducting the Registries.

TITLE XI.—RESPONSIBILITY OF REGISTERS.

ART. 313. Registers shall be civilly liable, in the first place, on their bonds, and in the second place, with their property, for all loss or damage they may cause:

1. By not recording in the Day Book, or not entering or making a cautionary notice within the time fixed by the law of the documents presented to the Registry.
2. For any error or inaccuracy committed in records, cancellations, cautionary notices, or marginal notes.
3. For canceling without good reason any entry record or omitting the entry of any marginal note within the proper time.
4. For canceling any record, cautionary notice, or marginal note without the document and the requisites demanded by this law.
5. For any error or omission in the certificates of records or freedom from incumbrances of realty or of property rights, or for not issuing said certificates within the time fixed by this law.

ART. 314. Errors, inaccuracies, or omissions indicated in the preceding Article can not be chargeable to the Register when they are due to some defect in the recorded document itself, and provided they are not of those which are manifestly and according to Article 19, number 9 of Article 42, and Articles 100 and 101, would have caused the denial or suspension of the record, entry, or cancellation.

ART. 315. The correction of errors committed in entries of any kind, which are not due to others committed in the respective deeds, shall not free the Register from the liability which he may incur for the damage that may have been caused by said errors before they were corrected.

ART. 316. The Register shall be liable on his bond and with his property for indemnities and fines which may arise through the acts of his substitute during the time the latter has charge of the Registry.

ART. 317. The person who, by error, malice, or carelessness of the Register, should lose a property right or the action to recover it, may immediately demand that the Register refund the value of what he has lost.

The person who, for the same reasons, loses only the mortgage of an obligation, may either demand of the Register that he create a mortgage equal to the one lost, or that he immediately deposit the amount, thus securing said obligation when it falls due.

ART. 318. The person who, through error, malice, or carelessness of the Register, is released from some recorded obligation, shall be jointly responsible with the Register for the payment of the indemnity for which the latter may be liable by reason of his error.

ART. 319. Whenever in the case of the preceding Article the Register indemnifies the person damaged, he may bring an action to recover the amount paid against the person who, through his error, was released from the recorded obligation.

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When the person damaged brings his action against the person benefited by said error, he can not proceed against the Register unless he does not obtain the indemnity sued for, or obtains only a part thereof.

ART. 320. The civil action which, in accordance with Article 317, the person damaged brings on account of the errors of the Register shall not prevent or arrest a penal action, which in a proper case may be instituted in accordance with the laws.

ART. 321. Any action which may be brought against the Register for the purpose of holding him liable shall be commenced and heard before the Inferior Court having jurisdiction of the Registry District in which the error has been committed.

ART. 322. Infractions of this law, or if the regulations for its execution, committed by Registers, although not causing any damage to third persons nor constituting a crime, shall be punished without the formality of a trial, by the Presidents of Audiencias, by the imposition of fines of 50 to 500 pesos.

ART. 323. Final judgments awarding damages and sentencing Registers to indemnify loss or damage shall be published in the Gaceta de Madrid and in the official papers of the proper Colony, if they are to be enforced against the bond, because the person condemned has not paid the amount of the indemnity.

By virtue of this publication, the persons who believe themselves damaged by other acts of the same Register may bring their actions, and should they not do so within the period of one hundred and twenty days the judgment shall be carried out.

ART. 324. If any actions are brought within one hundred and twenty days, the execution of the judgment shall be suspended until other final judgments in their favor are issued, unless it is manifest that the bond is sufficient to pay the amount of said claims after the judgment has been carried out.

ART. 325. Should the bond not be sufficient to pay all the claims which are considered good, its amount shall be divided pro rata among the persons who presented them.

The provisions of the preceding paragraph shall be understood to be without prejudice to the liability of the rest of the property of the Register.

ART. 326. The President of the Audiencia shall immediately suspend the Register ordered by a final judgment to pay the loss and damages, if within ten days he does not do so or make good his bond, or if he does not secure the claimants for the amount of their respective suits.

ART. 327. The person injured by the acts of a Register who does not file his claim within the period of one hundred and twenty days mentioned in Article 323 shall be indemnified with what remains of the bond of the Register, or with his property, and without prejudice to the provisions of Article 318.

ART. 328. If the claim for indemnity has been admitted and the amount of the bond does not appear sufficient to secure it, the Judge or Court must, at the instance of the claimant, order that a cautionary notice be made against the property of the Register.

ART. 329. Should the Register be condemned at the same time to pay damages and losses, and also to pay fines, the former shall be first paid.

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ART. 330. The period for the restitution of bonds must be computed from the time the interested party ceases to exercise the office of Register and not from the time he leaves one Registry and is transferred to another.

ART. 331. When a Register who passes from one Registry which requires a larger bond to another requiring a smaller one, the difference shall not be returned to him except at the time and under the conditions prescribed in Article 306.

ART. 332. The right of action to recover indemnity for the damage and loss suffered by the acts of Registers shall be limited to one year after said losses have been known to the person who may bring said action, and in no case shall it last a longer period than that indicated by the common law for the limitation of personal actions, computed from the time the offense was committed.

ART. 333. The Judge or Court before whom a Register is prosecuted for the indemnity of damages caused by his acts shall immediately advise of the action the President of the Audiencia under whose jurisdiction said Register is.

The President of the Audiencia, in view thereof, shall require the Judge or Court to order the entry of the cautionary notice mentioned in Article 328, should it be deemed necessary and should it not have already been ordered; requesting at the same time that he be informed at certain intervals as to the progress of the action.

The person who during one hundred and twenty days does not prosecute the claim he has filed shall be understood to have renounced his right.

TITLE XII.—FEES OF REGISTERS.

ART. 334. Registers shall collect the fees for the entries they may make in the books, and for the certificates they issue, in strict accordance with the Schedule accompanying this law.

Acts and work for which no fees are stipulated in said Schedule shall not be entitled to any compensation.

ART. 335. The fees of the Register shall be paid by the person or persons in whose favor the record or entry of the interest is directly made.

ART. 336. When there are several persons involved in the transaction the Register may demand payment from any of them, and the person making it shall have the right to recover from the others the part he may have paid on their account.

In any case the fees may be recovered judicially, but the entry shall never be refused or suspended on account of nonpayment.

ART. 337. Entries made in the indices and in any of the auxiliary books kept by Registers shall not be charged for.

ART. 338. In the fees mentioned in the Schedule for the certificates of Registers the price of the stamped paper on which they have to be executed is not included and shall be paid for by the persons interested.

ART. 339. At the foot of every entry, certificate, or note for which fees have been charged the Register shall stamp the amount charged, quoting the number of the Schedule by virtue of which it was demanded.

When one number of the Schedule is applied to several operations it shall be sufficient to record the fees charged at the foot of the

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principal entry or note, quoting the corresponding number of the Schedule, it being unnecessary to record in the other work the fees embraced in said number.

ART. 340. The fees charged by Registers for certificates and records ordered by Judges or Courts in consequence of actions in which they have jurisdiction shall be classified for their exaction and collection in the same manner as the other costs of said action.

ART. 341. When a Judge or Court decides that the refusal of a Register to definitely record or enter a document is unfounded, the person interested shall not be obliged to pay the fees for the cautionary notice, or, in a proper case, for the marginal note which said Register may have placed opposite the entry of presentation at the time the document was returned, nor for the cancellation of said note.

ART. 342. When an entry is corrected on account of some error committed therein by the Register, the latter shall not receive any fee for the new entry, but without prejudice to the provisions of the second paragraph of Article 263.

If the Register who made the mistake in the entry is not the same who is to make the correction, the latter shall have a right to bring an action against the former or his heirs for the recovery of the fees due for the new record.

ART. 343. For records, certificates, and other work, for which fees may be collected, incumbent upon Registers, these officials shall charge the fees indicated in the respective numbers of the Schedule, taking into account the value of the estates, or the interest created in them, which are transferred, or to which the operations indicated refer.

ART. 344. Registers, in writing the entries, notes, and certificates, shall act strictly in acordance with the instructions and models which the regulation for the execution of this law will contain.

ART. 345. The delegates of the Presidents of Audiencias for the inspection of Registries shall carefully examine in their visits of inspection to see if the records are made in conformity with the models indicated in the preceding Article, and they shall state in their report any errors of this kind they may observe, so that the Register who makes his entries more extensive than necessary or omits therein some of the details which they should contain, according to their class, may be disciplined.

ART. 346. No changes whatsoever may be made in the Schedule accompanying this law except by the enactment of another law.

TITLE XIII.—REDEMPTION FROM EXISTING ENCUMBRANCES.

ART. 347. Persons who may have any realty or property rights recorded in their favor may release them with regard to third persons:

1. From any legal mortgages or interests which have not been recorded to which they are or may be subject.

2. From charges which may not have been recorded or secured by a recorded mortgage, caused by a suit to establish or rescind an instrument, which can have no effect with regard to third persons without being recorded.

3. From the interests which, if having been recorded in the books kept by the old Recorders and Judges who received mortgages, the

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Register in whose charge said books are has not been able to determine the property which is affected thereby, the entries being defective.

4. From all suits to establish or rescind an instrument which can be brought, including those of the persons who may have previously recorded their titles relative to the same property or interests.

ART. 348. If, on the day this law is put into operation, the persons requesting the release have the ownership of the realty or property rights recorded in the books of the old "Anotaduría" or "Receptoría" of mortgages their request can not be complied with until they transfer the entries to the new books of the Registry.

ART. 349. For the effects of No. 1 of Article 347 shall be considered as not recorded besides the interests which are not entered in the old nor in the new books, those which have not been recorded in favor of any person nor been the object of judicial proceedings during the thirty years prior to the time this law has been put into operation, and were not entered in favor of their present owners before said period.

ART. 350. Interests considered not recorded, in accordance with the preceding Article, may be the basis of proceedings to clear the title.

ART. 351. The Judge of First Instance of the district in which the property or real interests are situated to which said proceedings refer is the only one who may declare it.

ART. 352. If the proceedings to clear the title of an estate situated in two or more districts is demanded, the Judge of competent jurisdiction shall be the one of the district in which is located the principal part thereof, such part being considered the one which contains the residence of the owner, or if there be none, the workrooms, and if there be no workrooms the part having the greatest area.

ART. 353. If the property to which the proceedings to clear the title refer be a railway, canal, or other work of a similar nature, or having a resemblance thereto, which crosses several districts, the principal part shall be considered such part, for the effects of the preceding Article, in which is situated the place from which the work starts.

ART. 354. In the proceedings for redemption may also be included, in the manner prescribed by Article 347, general mortgages established in accordance with prior legislation which are in force when this law is put into operation, viz:

1. In favor of married women, on the property of their husbands, for the dowry and personal property in addition to the dowry which has been delivered to them.

2. In favor also of married women, on the property of their husbands, for the dowry and donations by reason of marriage settlements which the latter may have made to them.

3. In favor of children, on the property of their parents, for the property which may be set apart.

4. In favor of children who are still under parental authority, on the property of their parents, for the property of which the latter are administering or enjoying the use.

The persons in whose favor these general mortgages stand can not demand the creation of a special mortgage.

ART. 355. The mortgages mentioned in the preceding Article, which are in existence on the day this law is put into operation, shall con-

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tinue in force in accordance with prior legislation, for the time the obligations which they secure hold good, with the following exceptions:

1. When, by the consent of the parties or of the debtor, they are replaced by special mortgages.

2. When the married woman or children, being of age, consent to the extinguishment, reduction, subrogation, or extension of the legal mortgage.

3. When legal mortgages have no further effect with regard to third persons, by virtue of a decree issued in the suit for clearing the title, as established in this title.

ART. 356. Persons who, on the day this law is put into operation, may have their property encumbered by some implied mortgage, as mentioned in Article 54, may at any time demand of the person holding said mortgage that he accept in its place a sufficient special and definite mortgage.

Should said person refuse to accept the mortgage offered, or should he accept it and the persons interested do not agree as to the amount of the obligation to be secured, or as to the insufficiency of the property offered in security, the Judge or Court shall decide the matter in the manner prescribed by Article 165.

ART. 357. The provisions contained in the preceding Articles do not alter or modify the preference allowed by law in the property other than realty or property rights therein, to those persons in whose favor legal mortgages have been created.

ART. 358. Registers of property have charge of the preparation or proceedings for clearing title.

ART. 359. A single proceeding for clearing title may be instituted for all the property comprised in the jurisdiction of the Registry, provided said jurisdiction embraces one subdistrict.

ART. 360. If the jurisdiction of a Registry comprises two or more subdistricts one proceeding shall be instituted for each subdistrict in which is situated the property which it is desired to clear.

ART. 361. The practice of proceedings for clearing title shall be in accordance with the following rules:

1. The interested person shall present to the proper Register a petition for each proceeding instituted.

2. In the petition shall be described the property or property rights the clearing of which is requested, with a statement of the encumbrances thereon and which are to remain in force, notwithstanding the clearing of the title, the legal mortgages and unrecorded interests, as well as all actions to establish or rescind title which may be brought against the property, if there be any and they be known; the names of the persons interested in said mortgages, interests, and actions, and their domiciles, if they be known; the names of the wife and children of the petitioner, should he have any, giving their age, status (whether married or single), and domicile, and the names of the persons who, during the twenty years immediately preceding, may have owned, according to the Registry, said property or interest; and the petition shall be made that one hundred and eighty days be fixed, either to request the creation of a special mortgage to replace the general one or to exercise the rights and actions which the persons referred to, or any others, may have, with a warning that, should they not be brought within said period the said legal mortgages, rights,

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or actions mentioned shall be considered as extinguished with regard to third persons who may subsequently acquire the ownership or a property right in any of the property cleared.

3. The Register shall certify at the end of this document as to the conformity of its contents with the entries in his books, should they so conform, or as to any differences which may exist.

Should the differences be material, he shall return the document to the interested party for its correction, or so that he may make use of his privilege.

Should the differences be immaterial, or should those it did contain have been corrected, the Register shall consent to the proceedings asked for in the petition to clear title, and shall make a report to the Judge of First Instance of the proper subdistrict.

4. In case the clearing of an estate located within the jurisdiction of several Registries is requested, the Register who institutes the proceedings shall notify those of the other jurisdictions, so that they may issue the certificate prescribed in the preceding rule, each one for the part of the estate which cofresponds to his office, for which purpose the former shall transmit a complete copy of such part of the petition as may be necessary.

5. The following shall be notified personally or by means of a notice in accordance with the provisions of Articles 246, 247, 250, 251, 252, and 253 of the Law of Civil Procedure of the Philippines; 262, 263, 266, 267, 268, and 269 of the same law for Cuba and Puerto Rico:

First. The wife and children of the petitioner, should he have any, and, if they be minors, their guardians, or in the absence of such, the representative of the Department of Public Prosecution.

Second. The persons, if there be any, or their legitimate representatives, who appear from the document clearing the title or from the Registry, interested in any legal mortgages, rights, or actions which should be extinguished on clearing the title.

Third. The persons, if they exist, who during the last twenty years may have had, according to the Registry, the ownership of the property or interests which it is desired to clear.

6. In notifying each person interested of the request of the petitioner a notice shall be delivered to each, signed by the Register, stating:

First. The name, surname, domicile, status (whether married or single), and profession of the petitioner;

Second. The property described in the petition for clearing the title;

Third. A designation of the part of the property which he desires to clear, should it not be the entire property;

Fourth. The kind of legal mortgage, interest, or action in which the person notified may be interested, and

Fifth. The period of one hundred and eighty days allowed in which to bring an action and the Court before which the suit must be instituted.

7. The notices shall be made by said Register in accordance with the above-mentioned Articles of the Law of Civil Procedure, if the persons notified reside in the same town where the Register is located.

Should they reside outside of said town, but within the jurisdiction of the Registry, the Register shall send a communication to the proper

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Municipal Judge, so that he may order the Secretary to make said notification. Should they reside outside of the jurisdiction referred to, the Register shall communicate the fact to the Judge of First Instance of the subdistrict, so that the latter may issue the necessary letters requisitorial.

8. When the estate which it is desired to clear is mortgaged in favor of the Public Treasury, the notification shall be sent to the Governor of the proper Province, or to the high official having jurisdiction of the matter which served as a basis for the mortgage.

9. Notifications to other persons who may be interested shall be made by means of a proclamation, posted in the usual places in the town where the Registry is established and where the property to which the clearing of title refers is located, said edicts being also published in the official papers of the respective colony.

The proclamations prescribed in the preceding paragraphs shall state:

First. The name, surname, residence, status (whether married or single), and the profession of the petitioner.

Second. A statement of the estates which the latter desires to clear, indicating their location, name, number, area, and boundaries, the deed referring to their last acquisition, and the name of their former owner.

Third. The encumbrances on said property and the ones which are to remain in force notwithstanding the clearing of title.

Fourth. Legal mortgages, interests, or actions to which they are or could be subject, according to the petition of the claimant, and which are to be extinguished by the clearing, should no objections be made.

Fifth. The period of one hundred and eighty days in which to file the claims in the Court of First Instance to which the Registry corresponds, with the proper notice.

10. The period of one hundred and eighty days shall be computed from the date of the official papers in which the proclamation is published, provided all the notifications prescribed in rules 7 and 8 have been made prior thereto. Should they not have been made, the one hundred and eighty days shall be computed from the last notification made, for all interested persons who wish to file some objection.

11. During the period of one hundred and eighty days the proceeding for clearing the title shall be on view in the office of the Register instituting it, so that all persons interested may examine it.

12. After the period of said one hundred and eighty days, the proceedings and all the papers showing the notices and the posting of the proclamations, together with a copy of the official papers in which the latter were published, shall be transmitted by the Register to the proper Judge of First Instance of the subdistrict.

Art. 362. Any objections which may have been presented to said Court of First Instance of the subdistrict, in consequence of the petition for clearing the title, shall not be heard until the Register transmits the proceedings, in accordance with the provisions of the preceding rule.

Art. 363. Before hearing the objections mentioned in the preceding Article, matters regarding declarations of poverty may be heard, and such as refer to the issue of copies or certificates of public documents, which are to serve as a basis for said objections, and any others which,

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in the judgment of the Judge of First Instance of the subdistrict, are considered urgent.

ART. 364. Should a person request the creation of a special mortgage, a copy of the request shall be given the petitioner, proceeding in the manner prescribed by Article 165.

ART. 365. If more than one person should request such mortgages, all the objections shall be heard in one trial and, until a final decision is rendered thereon, no property shall be declared cleared.

ART. 366. If any rights and actions have been brought which affect all of the property which it is desired to clear, they shall be heard together at one trial.

ART. 367. The provisions of the foregoing Article shall only be made use of when the hearing at one trial is compatible with the nature and object of the claims.

ART. 368. In case the actions brought only affect certain estates, they shall be heard separately.

ART. 369. The procedure in the trials instituted in consequence of the objections referred to in the two preceding Articles, shall be such as are respectively prescribed by the law of Civil Procedure.

ART. 370. If no claim has been filed against the property to be cleared, or the persons who have a right to demand the creation of a special mortgage forego it, with regard to said property, or the actions brought against all of the property in question have been ended, or if a part thereof is not affected by the objections filed, the Judge of First Instance of the subdistrict shall transmit the proceedings for clearing the title to the Department of Public Prosecution to ascertain whether said proceedings have been instituted in accordance with the formalities prescribed by this law, and to determine the property or interests which are to be cleared.

ART. 371. Should the Department of Public Prosecution find any inaccuracies, they shall be ordered corrected, as well as those which the Court should deem necessary to correct, and, after being confirmed, the judgment clearing the title shall be entered.

ART. 372. The judgment clearing the title shall state:

1. The name, surname, number, area, boundaries, and ownership of each of the estates cleared.

2. Whether it has been issued after the trial of other suits or not, mentioning such suits.

3. The fact of having created any special mortgage or mortgages for the security of interests which were previously guaranteed by legal mortgages or unrecorded incumbrances, or that said mortgages were not created on account of the renouncement of the interested parties, or because they have not been claimed, or because none existed.

4. The incumbrances remaining on the property, notwithstanding the clearing.

5. The fact that said estates are entirely free from all unrecorded incumbrances or legal mortgages, with regard to third persons who may later acquire the ownership or a property right in the same property.

The judgment shall be made public in the manner prescribed in the first paragraph of rule No. 9 of Article 361.

ART. 373. In the ten days following the publication of the proclamation in the official papers of the proper colony, an appeal may be

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taken from the judgment clearing the title to the Audiencia of the jurisdiction, by persons who may have been injured thereby, and who prove that by force majeure, or for other reasons, it was impossible for them to file their claim within the one hundred and eighty days mentioned in rule 10, of said Article 361.

The proper remedy by cassation may be had from the decision of the Audiencia.

Should no appeal be taken within ten days, or if the appeal taken is finally disposed of, confirming the judgment clearing the title, no appeal may be taken from the latter to the prejudice of third persons.

ART. 374. The Judge of First Instance of the subdistrict shall order that a certified copy of the judgment be issued and delivered to the person interested, so that he can present it to the proper Registry, and that the papers in the case be filed.

If an estate has been cleared which is situated in the jurisdiction of several Registries, a certified copy shall be delivered for each of them, confined to the property situated therein.

ART. 375. The Register to whom the certified copy of the judgment is presented shall make a note thereof in the special Registries for estates or interests cleared, stating briefly the contents of said judgment, so far as it refers to each estate. After this has been done, the certified copy shall be filed in the Registry.

ART. 376. In judgments clearing the title the intervention of attorneys or solicitors shall not be necessary.

The stamped paper employed shall be such as is designated by law.

Registers may demand, for the certificate prescribed in rule 3 of Article 361, the fees fixed in the Schedule accompanying this law; for the notifications which they make and, for the posting of proclamations, fees which Clerks of Courts of First Instance receive for the same work, according to the schedule in force for judicial matters, and for the entries of judgments in the special Registries of property, 50 cents for each entry.

In the Courts of First Instance the fees charged shall be in accordance with the schedule mentioned.

ART. 377. Persons who may have the ownership only of realty or property rights recorded, may clear them, in accordance with the provisions of the preceding Articles, with the following modifications:

1. In the petition requesting the clearing of the title, in the notices which are to be delivered to the persons to be notified, and in the edicts shall be stated the date of the entries or the dates of the entries of ownership.

2. The period of one hundred and eighty days mentioned in Article 361 shall be extended to one year.

3. Notice of the petition for clearing the title must necessarily be given to the Mayor of the town located in the district where the property, which it is desired to clear, is located.

ART. 378. Persons, who neither have the ownership nor the possession of the realty or the property rights recorded, and wish to record said ownership, in accordance with the formalities mentioned in Articles 395 *et seq.*, may request their clearing in the same proceedings, which must be instituted before the Court of First Instance of the subdistrict in which the property is located, provided the instrument, the notices which have to be issued to those interested,

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and the edicts, contain all the details prescribed in said Articles, and in Article 361.

The Judge of First Instance of the subdistrict shall also proceed in accordance with the provisions of said Articles and Article 362 *et seq.* up to 373, inclusive, with such changes as may be indispensable for the different cases.

ART. 379. The records of ownership which are made by virtue of the judgments entered, in accordance with the proceedings referred to in the foregoing Article, shall contain a statement to the effect that the property is cleared, with a brief statement of that part of the judgment which relates thereto.

ART. 380. Persons who have recorded neither the ownership nor the possession of the realty or property rights, and desire to record only the possession, can not request the judgment clearing the title to said property, or interests, until they have obtained such record, proceeding in this case in accordance with the provisions of Article 377.

ART. 381. Property acquired through inheritance or legacy, can not be cleared until five years have elapsed from the date of their record in the Registry.

ART. 382. Exceptions to the rule contained in the preceding Article are the property acquired by legal heirs.

ART. 383. Persons who on the day this law is put into operation have several estates of their ownership encumbered by an annuity (censo), or voluntary mortgage, the principal of which has not yet been distributed among them, shall have a right to demand that it be divided among those sufficient to secure said principal three times over, in accordance with the provisions of Article 119.

If one of the estates should be sufficient to secure said sum, it can also be demanded that the lien be reduced to the same.

If two or more of the estates in question must remain encumbered, each one must be sufficient to secure three times over that part of the principal which it guarantees.

ART. 384. The creditor or owner of the annuity (censualista), may also demand the division and reduction of the encumbrance in the case mentioned in the preceding Article, should the debtor or the person paying the annuity (censatario) not do so.

ART. 385. If the estates charged with annuities (acensuados), or mortgaged in the manner described in Article 383, should not be sufficient to secure three times over the principal of the annuity (censo) or the debt, the division of said principal can be demanded only among said estates, in proportion to their respective value, but not the clearing of any of them.

ART. 386. The division and reduction of the annuities (censos) and mortgages, mentioned in the preceding Articles, shall be made by mutual agreement between all persons who may be interested in the continuance of either.

Should the parties interested not come to an agreement, or if any one of them is an unidentified person, said division and reduction shall be decreed by the Court in a declaratory suit and with the intervention of the Department of Public Prosecution, should there be any unidentified or unknown interested persons.

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ART. 387. If the division or reduction of the annuity (censo) or mortgage is agreed to by all the persons interested, it must appear by means of a public instrument.

Should a suit have been instituted and a judgment rendered, the Court shall issue the proper mandate.

The annuities (censos) which have not been imposed on specified estates, but which have been secured by a general mortgage of all the property of the persons who created them, shall be understood as embraced in this Article, as well as in those following Article 383; therefore, the owner of the annuity (censualista) may demand that a lien for the annuity be created on property indicated, which is the possession of the person paying the annuity, should the latter not do so voluntarily.

ART. 388. Through the presentation of the document, or in a proper case, of the judicial mandate, the new mortgage or lien shall be recorded in the Registry according to the manner in which it has been created, and the previous ones which are to be replaced thereby shall be canceled, should they have been recorded.

TITLE XIV.—UNRECORDED DOCUMENTS AND RECORDS OF POSSESSION.

ART. 389. From the time this law goes into operation, no document or instrument which has not been recorded in the Registry shall be admitted in the ordinary or special Courts or Tribunals, in the Councils or offices of the Government, by which interests subject to record are created, conveyed, acknowledged, modified, or extinguished, according to the same law, if the object of the presentation be to enforce, to the prejudice of third persons, the interests which should have been recorded.

Notwithstanding the provisions of the preceding Article, the document which has not been recorded, but which should have been, may be admitted to the prejudice of third persons, if the object of the presentation be only to corroborate another subsequent instrument which had been recorded.

This document may also be admitted, if it is presented to demand a declaration of nullity and consequent cancellation of some entry which prevents the record of said document.

ART. 390. To facilitate the compliance of the preceding Article, to owners who lack a recorded title of ownership, no matter at what period the acquisition took place, they shall be permitted to record their interest by previously proving their possession, before the Judge of First Instance of the place where the estates are located, with the consent of the Department of Public Prosecution and citation of the adjacent property owners, should they desire to record the absolute ownership of some estate, and with the citation of the owner or other participants in the ownership, should they desire to record some property right.

If the estates are located in a town or township where no Judge of First Instance of the subdistrict resides, said proceedings may be held before the proper Municipal Judge, with the consent of the representative of the Public Prosecutor.

The intervention of the Department of Public Prosecution shall be limited to seeing that the formalities of law are observed in the proceedings.

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ART. 391. In the preparation of the papers to which the preceding Article refers, the following rules shall be observed:

First. The document in which the admission of the proceedings is requested shall contain:

1. The nature, location, area, boundaries, name, and incumbrances on the estate, the possession of which it is desired to prove.

2. The legal nature, value, conditions, and incumbrances on the property right, the possession of which is in question, and the nature, location, boundaries, and name, should it have any, of the estate on which such right exists.

3. The name and surnames of the person from whom the realty or interest was acquired.

4. The length of time the possession has been had. The circumstance of demanding a written title or the difficulty of finding it, should it exist.

Second. The proceedings shall be held in the presence of two or more witnesses, landowners of the town or municipal district in which the estates are located.

Third. The witnesses shall prove that they have the qualifications mentioned in the preceding rule, presenting the document necessary for this purpose.

They shall limit their testimony to the statement that the person who instituted the proceedings possesses the estates in his own name, and to the time of said possession, and they shall be responsible for any damage they may cause by the inaccuracy of their depositions.

Fourth. The person who desires to have his possession recorded, shall present a certificate of the Mayor or official intrusted with the collection of land taxes in the town of the municipal district in which the estates are located. This certificate shall clearly set forth, in accordance with the assessment roll, sworn statements or documents presented by the taxpayers, or other data from municipal offices, that the person interested pays the taxes as the owner of the property, stating the amount paid on each estate, if it appears, and should this not be possible, it shall be stated that all of them were taken into account at the time of the last assessment.

When no quarterly payment of taxes has been made because the acquisition has been recent, the person from whom the realty was acquired shall be notified of the proceedings, or his heirs, so that they may declare whether they have any objections to make against its record.

If the person requesting it is an heir of the previous possessor, he shall present the last receipt for the taxes which may have been paid, or any other document showing that the payment was made.

Fifth. If the owners of the contiguous estates, or the part owner of the property or interests in an estate, who must be cited, are absent, and their whereabouts are known, the Court shall cite them by means of a communication, if they reside in the colonies, or he shall address himself through the Colonial Department, if the persons are to be found in the Peninsula, or in any of the other colonies. If their residence be in some foreign country, the communication shall be addressed through the same official channels to the consul of the country in which they are residing, requesting them to appear in person or by proxy within the period deemed convenient, accord-

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ing to the distance, and which can not be less than ninety days, computed from the date of the notice.

If their whereabouts are unknown, they shall be cited by means of official edict published in the official papers of the proper Colony, and within the period of ninety days; and, if at the end of this period the persons cited should not appear, the Court shall approve the proceedings and order that the record of the interest be made without prejudice to the interests of said contiguous owners or part owners, and stating that the latter have not been heard in the proceedings.

The record shall in such case also contain said statement.[a]

Sixth. Any person, who believes that he has a right to the estates or a part thereof, the record of which is requested through an information as to possession, may institute a declaratory suit to enforce it before the Court of competent jurisdiction.

The interposition of this claim and its entry in the Registry shall suspend the course of the proceedings with regard to the information, or the entry thereof, should they already have been concluded and approved.

Art. 392. Should the notice drawn in accordance with the form prescribed in the preceding Article, be sufficient, and there be no opposition by a person having a right thereto, or such a position as was made, having been abandoned, the Court shall approve the proceedings, and order that the record requested be made in the Registry without prejudice to a third person having a better claim.

The possessor who may have acquired the decree mentioned in the preceding paragraph, shall present to the Registry, in requesting the proper record, the original papers in the case which have been turned over to him for this purpose, being permitted to transmit therewith a copy of the same on common paper, should he desire to keep them, which, after being compared by the Register and the certificate of comparison attached thereto, shall be returned to him, the original in all cases being filed.

Art. 393. Registers, before recording any estate or interest by virtue of the notices prescribed in the three foregoing Articles, shall carefully examine the Registry to ascertain whether it contains any entry relating to the said realty, which may be totally or partially canceled in consequence of said record.

Should he find any record of acquisition of ownership or possession not canceled, and which is in contravention to the fact of possession justified by the judicial information, he shall suspend the record, enter a cautionary notice, if requested to do so by the person interested, and shall transmit a copy thereof to the Court which approved said information.

The Judge, thereupon and on the citation and consent of the persons who, according to said record, may have some interest in the realty, shall confirm or revoke the decree of approval, in either case communicating the decision rendered to the Register so that he may either make the record or cancel the cautionary notice.

If the persons who should be cited are absent, the formalities prescribed by rule No. 5 of Article 391 shall first be complied with.

Should the Register find uncanceled any record of an annuity (censo), mortgage, or any property right in the estate which should

[a] See Official Gazette, P. R., No. 82, Apr. 7, 1899.

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be recorded, he shall make the entry of possession requested by virtue of judicial information, but he must state therein the existence of such record.

Entries of possession shall be converted into records of ownership when they have the following requisites:

1. That twenty years have elapsed since the date of entry.

2. That the conversion of the entry of possession be announced by means of a proclamation in the proper Official Bulletin, so that persons interested, who consider themselves prejudiced thereby, may object by bringing the proper action within the period of thirty days; and

3. That after the periods mentioned in the preceding paragraphs having elapsed, no entry or note exists in the Registry indicating that the prescription has been interrupted.[a]

For this purpose, if the interruption be a natural one, it shall be proven in a summary procedure before the Judge of the Municipality where the property is located, the cause thereof, and how the possession ceased on that account for more than one year; and the certified copy having been issued, the proper note shall be made at the margin of the entry of possession. If the possession has been civilly interrupted, it shall be so stated in the Registry, either by means of a marginal note made by virtue of a communication from the Court, in which the citation of the person possessing the property shall be copied, or by reason of the presentation of a certified copy of the agreement, either by means of a cautionary notice of the claim, the effects of which shall retroact to the date of the presentation to the Registry of the copy of said agreement, or by the record of the instrument which contains the express or implied acknowledgment of the right of the owner by the person in possession. Thirty days after the twenty years have elapsed the Registers shall, at the instance of the persons interested, make the proper record of conversion, if the requisites mentioned in the preceding paragraph have been complied with.

ART. 394. Records of possession shall contain all the details mentioned in Article 391, and also the names of the witnesses who may have testified, the result of their depositions, the result of other investigations made in the proceedings, the opinion of the Department of Public Prosecution, and the special circumstances of the record, according to its character, so far as they appear from the papers in the case.

If the twenty years calculated from the date of the entry have not elapsed, or the requisites mentioned in Article 393 of this law have not been complied with, the entries of possession shall have the legal effect embraced in the provisions contained in the following paragraphs.[a]

The period of possession which appears to have elapsed at the time said entries are made shall be computed for the prescription which does not require a just title, unless a person prejudiced thereby denies it, in which case said period of possession must be proved in accordance with the common law.

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[a] See Official Gazette, P. R., No. 82, Apr. 7, 1899.

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Entries of possession shall prejudice or favor third persons from the date of their record, but only with regard to the effects which the laws attribute to mere possession.

The entry of possession shall not prejudice the person who has a better right to the ownership of the realty, although his title has not been recorded, unless the prescription has confirmed and secured the claim recorded. Between the parties the possession shall be effectual from the date prescribed by the common law.

The provisions contained in the preceding Articles, regarding the entries of possession, can not be applied to mortgage rights, which can not be recorded unless an instrument in writing is presented.

ART. 395. Any person in possession, who should not have a written title of ownership, without regard to the period the acquisition took place, may record said ownership by complying with the following formalities:

1. He shall present to the Judge of First Instance of the subdistrict in which the estates are located, or to the one in whose district the principal part thereof is located, if it is an estate situated in various subdistricts, explaining the manner in which he acquired them, and the legal proofs which he can offer of said acquisition, and requesting that, with the citation of the person from whom said property was acquired or his legal representative, and of the Department of Public Prosecution, the proofs mentioned be admitted and his right declared.

2. The Judge shall give a copy of this document to the Department of Public Prosecution, shall cite the person from whom the property was acquired or his legal representative, should he be known, and the persons who have any property right in said property; he shall admit all the pertinent proofs which may be offered by the claimant, by the interested persons cited, or by the Department of Public Prosecution, within the period of one hundred and eighty days, and he shall issue a call for the unknown persons whom the desired record might prejudice, by means of proclamations posted in public places, and which shall be published three times in the official papers of the proper colony, so that they may appear, if they desire to substantiate their claim.

If the persons to be cited should be absent, the procedure established for citations in rule number 5 of Article 391 shall be pursued.

3. After said period has elapsed, the Judge shall take cognizance of the claims and proofs submitted, in writing, to the Department of Public Prosecution, or to others taking part in the suit, and in view of their allegations, and deciding on said proofs with an impartial judgment, he shall declare whether the ownership of the property in question is proven or not.

4. The Department of Public Prosecution, or any of the persons interested, may appeal from this decision, and, should they do so, the appeal shall be conducted in the manner prescribed for proceedings in the nature of a demurrer by the Law of Civil Procedure.

5. If said decision is agreed to or confirmed, it shall be sufficient title for the record of the ownership.

6. When the value of the realty does not exceed 1,000 pesos, the proceedings which, according to rule 3, must be submitted in writing to the Department of Public Prosecution and to the persons interested,

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shall be oral; and the appeal, should one be taken, shall be in accordance with the procedure established for these appeals in actions for small amounts.

ART. 396. The person in possession of a property right to some estate, the owner of which should not have recorded said ownership when this law is put into operation, may request the record of his interest in the manner prescribed by the regulations, as well as a cautionary notice of the interest of the owner, in accordance with number 9 of Article 42, until the owner of the realty, on being cited, comes forward to contradict the entry or to record his property within the period of thirty days.

The owner of the encumbered estate can not impugn this entry unless he requests at the same time a record of ownership, presenting the proper deed or proof of having commenced proceedings disputing title and demanding the judicial declaration of said ownership.

Should the owner of the realty be absent, the formalities provided for citations in rule number 5 of Article 391 shall first be complied with, and the time shall be computed from the date of the notice.

TITLE XV.—EFFECTS OF ENTRIES CONTAINED IN THE OLD BOOKS AND OF THE RESTORATION OF THOSE RENDERED USELESS BY FIRE OR OTHER ACCIDENTS.

ART. 397. The entries contained in the Registries existing in the offices of "Contadurías," "Anotadurías," or "Receptorías" of mortgages shall have their proper effect, in accordance with the law in force before the mortgage law was put into operation in the respective colonies, if said entries have been or are transferred to the new books of the Registry.

Records of annuities (censos), mortgages, liens or any other property right contained in said books existing in the offices of the Contadurías, Anotadurías, or Receptorías of mortgages must be transferred to the books of the new Registry within the period of one year from the time of the promulgation of this law. This transfer must be made at the request of an interested party.

If the transfer is solicited through a request addressed to the Register within said period, the effects of the transfer shall retroact to the date of the entry in the old books, this fact being stated in the new ones. If the request is filed at a subsequent date it can not prejudice third persons.

If the encumbered estates should not be recorded either in the old or in the new Registry, the record of ownership or possession must first be made in the manner prescribed by the present laws in force, at the instance of the person who has the property right in question recorded in his name.

If the person who requests the transfer is not the same one in whose favor the lien is recorded, he may have it recorded in his name, either by presenting the deeds of ownership proving his right, or by proving that he is actually in possession thereof, by any of the means indicated in Title XIV of this law; but the person, or his legal representatives, who, according to the Registry, appears to have an interest in the lien, must always be cited, either personally or through a proclamation.

If, in transferring the records referred to in the present Article, some of their details are taken from additional notes presented by the

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interested parties, the part of the new records referring to said details, shall not prejudice third persons.

In case the details presented refer to the boundaries of an agricultural estate, that part of the record relating thereto shall prejudice the owners of the contiguous land who may have signed it.

Owners of annuities (censos), incumbrances, and other interests who request the transfer of the records contained in the old Registries within the time fixed by this Article, shall be exempted from the payment of the fees, fines, and charges for delay in the proceedings which took place before said period had elapsed, and for the entry made in their favor, and they shall pay the Registers only half the usual fees, it being understood that in the new Registry not more than one entry shall be made for each incumbrance of property right, which shall include the old one, the conveyances which took place thereafter, and the interest of the person in possession.

Records contained in the books of the Registry, prior to said date, shall have all the effects of entries subsequent thereto with regard to the interests they set forth, although the former may lack some of the details which, under penalty of nullity, are required by Articles 9 and 13 of this law, and although they are not transferred to the new books.

ART. 398. If, on account of some accidental or intentional destruction, the books of the Registry of property are totally or partially destroyed, the judicial authority usually delegated to inspect the Registries, shall without loss of time make an extraordinary inspection with the assistance of the Register or his substitute, and, in the absence of both, with the Department of Public Prosecution, and the report thereof shall contain as clearly as possible the condition of the Registry, stating the books or parts thereof which have been destroyed and the measures provisionally adopted to attend to the public service.

When the inspection has been made, the said official shall, as soon as possible, transmit to the Colonial Minister a copy of said report through the President of the Audiencia.

ART. 399. Instruments which can not be definitely recorded on account of the loss or destruction of the books of the Registry, shall be entered as a cautionary notice, in accordance with number 8 of Article 42.

The entry made for this reason shall cease to be effectual after the termination of the period mentioned in the following Article, if the instruments proving the acquisition of the estate or right have not been entered before this law is put into operation.

ART. 400. The records, entries, marginal notes, and other memoranda contained in the books of the old offices of the Contadurías, Anotadurías, or Receptorías of mortgages, or in those of the Registry of property, which have been totally or partially destroyed by fire, flood, or other casualty due to force majeure, accidental or intentional, may be restored, by again presenting the documents to which said entries referred, within the period of one year, and in accordance with the rules prescribed by this law. The Colonial Department shall, by a special order, fix the date from which said period is to be computed for each Registry.

ART. 401. In all cases the instruments shall have to be presented which contain the memorandum showing that cognizance has been taken of them, or that they have been entered or recorded in the

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proper book, provided that the acquisition of the estate or right is proved, before the date this law is put into operation. When the record is copied, the Register shall write and sign on the instrument another memorandum stating this fact.

ART. 402. The other documents intended to correct the inaccuracies of the recorded instruments shall also be presented.

ART. 403. The person in possession of any annuity (censo), mortgage, servitude, or any other property right in an estate, the owner of which has not recorded nor re-recorded his ownership, may request that his interest be again recorded, provided that the acquisition of the ownership or possession of the estate can be proven by the instrument or other authentic documents presented.

The record of this ownership shall be made in accordance with the general rules, and without prejudice to the right of the owner to make additions thereto, or to correct it on the presentation of new documents.

ART. 404. The owner who does not have in his possession the instruments previously recorded, and who proves the destruction or loss of the originals or of the drafts thereof, may replace this loss at any time and again record the ownership or possession, in accordance with any of the measures prescribed by Articles 390, 391, and 395.

ART. 405. Registers can not refuse to again record instruments which have already been recorded.

Should they perceive any error which can not be corrected, they shall confine themselves to showing it, so as to avoid all responsibility. Should it be capable of correction, they shall proceed in accordance with Articles 19, 66, and 402.

ART. 406. Registers who have in the books of the old offices of Contadurías, Anotadurías, or Receptorías, records corresponding to those contained in the books destroyed, shall forward a detailed statement thereof to the office where the accident happened, within the period of one year mentioned.

Without prejudice thereto, said officials shall issue true copies of the entries or records, which the interested parties may request for the purposes of this law. For these certificates they shall receive no fees.

ART. 407. When several instruments are presented which have already been recorded, showing the subsequent conveyances of the ownership of the estate, or of any of the property rights therein, they shall all be embraced in one entry.

Estates shall be given the correlative number which belongs to them, according to the order established by the Register after the destruction. In the new entries or records, there shall be stated the number which the estate has previously had.

ART. 408. The records and other entries which are replaced in accordance with this law, from the time of the destruction of the books until the determination of the period mentioned in Article 400, shall have their proper effects, with regard to the interests they set forth, according to the present laws, from the date the new entries were made.

For all legal purposes, the date of the memorandum at the foot of the instrument stating that it has been entered or recorded, shall be considered the date of the new entry. If the instruments have been lost and the date of said note or of the records referred to therein can not be proven by any other documents, the provisions of this Article shall have no effect.

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ART. 409. The new entries treated of in the foregoing Article shall only pay a fifth of the usual fees mentioned in the Schedule.

ART. 410. After the period fixed in this law has elapsed, instruments which have once been recorded or entered can be again recorded, but said records or entries shall not prejudice nor favor third persons, except from their date, and the usual fees mentioned in the Schedule shall be charged therefor. Notwithstanding, the other provisions of this law are applicable to said instruments.

ART. 411. Articles 17, 20, 23, and 34, and all others referring to the effects of not recording or entering any interest, shall be suspended, with regard to estates and interests, the entries of which have disappeared, from the date of the destruction or loss of the books of the Registry until the expiration of the period allowed.

The period mentioned in this law and in the regulations for its application for the conversion of cautionary notices into definite records, shall also be suspended. The Register shall call attention to this fact and to the present Article in any certificates he may issue regarding said estates or rights. At the termination of said period, Registers must have the new indices made, or the ones existing in the respective portion of the destroyed book must be corrected.

ART. 412. All the acts, proceedings, and documents which the persons interested may require, to make use of the privileges allowed in the present title, shall be made on stamped paper.

FINAL PROVISION.

ART. 413. All previous provisions regarding mortgages are hereby repealed. Any provisions which conflict with those of this law are also hereby repealed. None of the articles composing this law can be repealed, except by virtue of another special law, and the appropriation law can never be considered a special law for this purpose.

The periods mentioned in this law shall be computed from the time it is put into operation.

ADDITIONAL ARTICLES.

1. The Articles referring to the Royal Fees, which do not exist at present in the Philippines, as well as those referring to taxes not yet extended to said Archipelago, shall not be applied to them until opportunity offers.

By "Municipal District" (termino municipal) shall be understood in the Philippines, the one formed by the towns where there is a Captain or Petty Governor (Gobernadorcillo); by "Municipal Judge," the Justice of the Peace or Captain or Petty Governor (Gobernadorcillo), in cases where they exercise the functions of the latter; by "Municipal Public Prosecutor," where none exists, the Agricultural Supervisor (Teniente de Sementeras).

2. In Cuba and Puerto Rico, where there is no Municipal Public Prosecutor, this official shall be replaced by the Syndic of the respective Municipal Council.

3. The two foregoing provisions shall also be considered extended to all provisions of a general character, which may hereafter be enacted for the Colonies, and in which only the technical phrases used in this law shall be employed.

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4. The subsidy which had been allowed Registers of Property in the Philippines by Article 313 of the Mortgage Law, which was applied to the Philippines by Royal Decree of May 10, 1889, and which is abrogated by the present one, shall continue to be enjoyed by said officials, in the same manner and during the time they are in charge of the actual Registries; all those who are not embraced in the above-mentioned case the day this law is put into operation, shall also enjoy the subsidy, but subject to any change or suppression which the Government may decree with respect to said right, in accordance with public policy and interests.

5. The fees which notaries may charge for any purpose whatsoever, in certifying to alienations, liens, or partitions, shall be the following:

For the alienation or encumbrance of any estate, the value of which does not exceed 25 pesos, 25 cents; from 25 to 75 pesos, 40 cents; from 75 to 150 pesos, 50 cents; from 150 to 250 pesos, 62 cents.

For the procedure of records relating to the partition of inheritances, when the amount involved does not exceed 1,000 pesos, 5 pesos; from 1,000 to 1,500, 7.50 pesos; from 1,500 to 2,500, 10 pesos.

The stamped paper to be employed in the records of proceedings relating to partitions, as well as in the copies thereof, shall be that bearing the seal of the last class.

6. The fees for recording sales or liens, referred to in Article 3 of this law, in its second and following paragraphs, to be charged by Registers, shall be the following:

For recording any estate or lien, the value of which does not exceed 25 pesos, 25 cents; from 25 to 75 pesos, 40 cents; from 75 to 150 pesos, 50 cents; from 150 to 250 pesos, 62 cents.

The fees to be charged by Registers for recording petitions, referred to in the same paragraphs of the Article mentioned, shall be the same as those for short records specified in Article 7 of the Schedule annexed to this law.

For recording notices referred to in Article 390, they shall charge fees in accordance with the rates established in the first paragraph of this Article.

7. Alienations referred to in the second and following paragraphs of Article 3, shall pay as tax for transfer of ownership:

For estates the value of which does not exceed 75 pesos, 50 cents per 100.

From 75 to 250 pesos, 1 per 100.

Liens created in accordance with the same Article, shall pay for estates the value of which does not exceed 75 pesos, 12 cents per 100.

From 75 to 250 pesos, 25 cents per 100.

The tax for transferring ownership of partitions or inheritances, which do not exceed 2,500 pesos, is reduced to 50 per cent of the fees fixed by this law.

8. In order that the statistical service referred to in Article 310 of this law, and of the others of the Civil Registry and Notarial Instruments placed in charge of the Registry and Notarial Division, may be made annually without difficulty, and for the purpose of defraying the expenses of printing and other necessary expenditures, the annual sum of 1,500 pesos shall be allowed in the estimates made for the Colonies. Said expenses shall be authorized by the Chief of the Registry and Notarial Division, who shall open a special item for them, of which he shall give an account, with the vouchers, to the Colonial Secretary.

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9. The Presidents of the Territorial Audiencias of the Colonies, in accordance with the data which they may demand from the Judges, Delegates, and Registers of Property, and of the administrative mortgage matters they have taken part in, shall forward to the Colonial Department at the end of each year, a report stating the deficiencies and doubts they have encountered in the application of this law. They shall state therein, in detail, all questions and points of law discussed and the articles or omissions of the law which gave rise to the questions. The Colonial Secretary shall forward these reports with the report made thereon by the Registry and Notarial Division, as well as the statistics of the Registries of property, to the Committee on Codes for the Colonies. In view of this data, of the progress made in other countries, which may be utilized in our own, and of the administrative and judicial opinions in mortgage matters, the Committee on Codes shall formulate and transmit to the Government every ten years, the reforms which (in its opinion) should be introduced.

SCHEDULE OF THE FEES TO BE CHARGED BY REGISTERS OF PROPERTY.

EXAMINATION OF DEEDS, ENTRIES OF PRESENTATION, AND CORRESPONDING ENTRIES.

Number 1.

	Pesos.
For the examination, entry of presentation, marginal note and note at the foot of any instrument referring to five estates or less, the record, entry, or marginal note of which is requested, with the exception of cancellations; by instrument being understood the document or documents necessary for an entry of presentation	0.75

Number 2.

If it refers to more than five estates the following scale shall be observed:

From 6 to 10	1.00
From 11 to 20	1.50
From 21 to 30	2.00
From 31 to 50	2.50

Should it exceed this number, for the first 50 the charges shall be as specified, and for the balance, 5 centavos for each one valued at 300 pesos or more and 2 centavos for each one of a lesser value.

Number 3.

When the instrument to be examined by the Register exceeds 50 folios, he shall charge for each extra folio	.02

Number 4.

If the value of the estates or rights to which the instrument refers does not reach 300 pesos, he shall charge without regard to the number of folios it may contain, or the number of estates or rights to which it refers	.25

CANCELLATIONS.

Number 5.

For all work, without regard to its form, which should be made at the instance of an interested party, for the cancellation or clearing of mortgages, annuities (censos), or property rights, including the entry of presentation and marginal notes, the following fees shall be charged for each estate:

If the estate or right is valued at less than 300 pesos	$2.00
From 300 to 1,000	2.50
From 1,000 upward	3.75

Should the cancellation be refused or suspended, the preceding numbers of the Schedule shall be applied.

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SPECIAL NOTES, RECORDS, AND ENTRIES.

Number 6.

When, in consequence of the presentation no record or entry should be made but marginal notes in the old or new Registry can be made, the charge for each one shall be 50 centavos.

For each one of the notes embraced in Article 16 of the law, the same amount shall be charged.

Number 7.

For each record or entry and corresponding marginal notes, not embraced in the preceding numbers, the fixed amounts established by the following rate shall be charged:

	Records or entries in full.	Records or entries in abstract.
	Pesos.	*Pesos.*
For each estate or right which does not reach a value of 300 pesos	3.00	2.70
300 to 600 pesos, exclusive	3.50	3.15
600 to 800	4.00	3.60
800 to 1,000	4.50	4.05
1,000 to 1,500	5.00	4.50
1,500 to 2,000	5.50	4.95
2,000 to 2,500	6.00	5.40
2,500 to 3,000	6.50	5.85
3,000 to 4,000	7.50	6.75
4,000 to 5,000	8.75	7.85
5,000 to 8,000	10.00	9.00
8,000 to 10,000	11.25	10.10
10,000 to 12,000	12.50	11.25
12,000 to 14,000	14.00	12.60
14,000 to 16,000	15.50	13.95
16,000 to 18,000	17.00	15.30
18,000 to 20,000	18.50	16.65
20,000 to 25,000 pesos, inclusive	20.00	18.60
Above 25,000	25.00	22.50

For the conversion into a record of an entry made on account of an error which may be corrected, and for the suspension of entries of cautionary notices, half the fees mentioned in the preceding rates shall be charged.

COPIES OF ENTRIES, CERTIFICATES, AND SEARCH FOR DATA.

Number 8.

For copy of entries in the Registry, for each estate, without regard to its value, 50 centavos.

Number 9.

For the first page of literal certificates $1 shall be charged, irrespective of the value of the estates or rights referred to.

Number 10.

For the subsequent pages of certificates half the fees mentioned in the preceding number shall be charged.

Number 11.

For each entry regarding which a certificate in abstract is issued:

If it refers to an estate of right, the value of which is less than 300 pesos, 75 cents.

If the value thereof is 300 pesos or more, 1 peso.

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Number 12.

When the certificates are to contain a reference stating that no entry at all or no entry of a specified class exists, regarding the estates or property rights, the fees shall be:

For the reference to each estate or right valued at less than 300 pesos, 35 centavos.

Of 300 pesos or over, 50 centavos.

Number 13.

For the search in the old or new Registry, in order to make the statement, when the folio and book containing the record of the estate is not specified, or to issue the certificates referred to in the preceding numbers, for each estate and for each year to be searched, the fees designated in the following rate shall be charged, and in no case shall they exceed the amount fixed therein:

	For each year, if the search covers only a period of 30 years or less; and if it covers more than said period, for the first 30 years.	For each year exceeding 30 years, when the search covers 31 years or more.	Highest fee which can be charged for each estate, without regard to the number of years searched.
	Pesos.	*Pesos.*	*Pesos.*
For each estate or right the value of which is less than 600 pesos	0.05	0.01	3.00
600 to 1,000, exclusive	.06	.02	4.00
1,000 to 2,000	.07	.03	5.00
2,000 to 3,000	.08	.04	6.00
3,000 to 4,000	.09	.05	7.50
4,000 to 5,000	.10	.06	8.75
5,000 to 8,000	.12	.08	10.00
8,000 to 10,000	.13	.09	11.25
10,000 to 12,000	.14	.10	12.50
12,000 to 14,000	.16	.12	14.00
14,000 to 16,000	.17	.13	15.50
16,000 to 18,000	.19	.15	17.00
18,000 to 20,000	.20	.16	18.50
20,000 to 25,000, inclusive	.22	.18	20.00
25,000 and upward	.27	.23	25.00

Number 14.

For the search, with regard to persons, for each person and year, irrespective of the number of estates or rights found, in the old as well as in the new Registry, the charge shall be 10 cents.

GENERAL RULES.

1. For the purpose of grading the fees, the value of an estate encumbered by a mortgage, is the price for which it was transferred, besides the value represented by the mortgages if they are in force.

2. The value of annuities (censos) and other liens of a perpetual, temporary, or redeemable character shall not be added to the price of the transfer.

3. When the transfer is made with a money consideration, the value of the estate shall be understood diminished to the extent of the amount of any liens there may be thereon.

4. With regard to the rights of use, and use and occupancy, their value shall be considered as the fourth part of the estate, and with regard to the mere ownership, three-quarters thereof.

5. For the charges of fees for leases, the amount to be paid during the entire period of the duration of the contract shall be taken as a basis. Should the period of duration of the contract not be determined, the basis shall be the amount for twelve years.

6. The fees to be charged for the registration or entry and marginal notes of servitude shall be 5 per cent of the value of the dominant estate.

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7. With the object of enabling the Register to grade his fees in accordance with the provisions of this Schedule, he must take into account the contents of the instrument itself, not taking into consideration the value of encumbrances which are canceled in the Registry, should they be mentioned in the instrument. If the value of each estate or interest does not appear in the instrument, the person presenting it shall be required to state said value in a note on common paper, which shall be filed in the office. Should he not make this statement, the Register shall have a right to charge the highest fee of the proper scale or such fee as he may deem advisable.

8. When, for the purpose of ascertaining the value of some estate or property right which is transferred, it should be necessary to compute some lien thereon, affecting at the same time other property, the responsibility of each one of them not being determined, a memorandum on common paper shall be made in which all the estates subject to the lien shall be detailed, and the value of each one, so that the Register may make the proper calculation, computing the lien, with regard to the estate or interest which it is desired to enter, and the amount which, according to the value of the latter, it bears pro rata with the other encumbered estates. Should this statement not be presented, the Register need not take into consideration the encumbrance in question.

9. Registers of property must not charge any sum by way of fees without giving the person paying them a detailed receipt, who must sign his agreement therewith in the proper stub, which is to be kept in the office. Should he not be able to sign, a witness shall do so at his request.

PROVISIONAL ARTICLES.

1. The period fixed in Articles 361, 403, and corresponding ones of the mortgage law, applied to Cuba by royal decree of May 6, 1879, which is repealed by the present law, extended indefinitely by royal decree of May 6, 1882, is hereby declared as definitely closed after one year from the enactment of this law, the persons interested to whom these provisions refer, being able to enjoy the advantages allowed them therein within this period.

2. Registries in the Colonies, being reduced by this law to three classes, those of the fourth class, which are in existence in Cuba, shall hereafter be considered as of the third class, which shall be the status of their present employees from this date.

3. The Registry and Notarial Division, established by Article 265 of this law, takes the places of the Office of Civil Registers and Property and of Notaries which had been in existence, the present employees of which shall preserve all their rights in the Division, being subject to the other provisions referring to them which this law contains.

4. Notwithstanding the provisions contained in Article 1 of this law, regarding the creation, suppression, or alteration of the jurisdiction of Registries, matters which are pending shall be continued until their decision in accordance with the mortgage law previously in force in the respective Islands.

Madrid, July 14, 1893.

The Minister for the Colonies:

ANTONIO MAURA Y MONTANER.

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TRANSLATION OF GENERAL REGULATIONS FOR THE EXECUTION OF THE MORTGAGE LAW FOR CUBA, PORTO RICO, AND THE PHILIPPINE ISLANDS.

(1893.)

WAR DEPARTMENT,
DIVISION OF CUSTOMS AND INSULAR AFFAIRS.
1899.

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INTRODUCTION.

MADAME: The Mortgage Law sanctioned by Your Majesty for the Colonies, amending the real estate system, made a change in the Regulations unavoidable.

In the law the greatest respect for the original text was observed, conforming thereto, as far as practicable, in the arrangement and nomenclature of its titles and the numeration of its articles. But it is not possible at the present time, nor would it be advisable, to observe the same rule, with the exception of the recompilement of the three regulations which were applied to the Colonies into one, in the same manner in which the three laws have already been united. The subordination of the new to the old text is impossible, because the regulations being liable to change, as they are perfected daily by the teachings of experience, some parts being amended, while new cases are embraced in others, the text for the Antilles was somewhat distinct from that for the Peninsula, that for the Philippines differing still more therefrom, and separate new provisions are now in existence which must be embraced in the new text. To all this must be added the fact that, in the endeavor to improve the method, the system pursued by the law was departed from in the regulations, as if a different legal subject were in question, adopting another arrangement of the subject-matter by which its management and the attempt at agreement is made rather difficult. Perhaps the arrangement which was preferred is more perfect than that of the law, but the difference has caused confusion, which has been increased by the large number of provisions and decisions not yet incorporated in the text.

To re-establish the coördination of the regulations and the law, and to unify the arrangement of the subjects, is one of the advantages of the annexed plan.

Of the regulations enacted for the execution of the mortgage law, those for the Philippines, dated August 16, 1889, are the latest. All the provisions which have been enacted were condensed up to this date, and have been made use of in the foundation of the one now proposed. The consideration of the method indicated has suggested this choice, and all the provisions of a general character proposed up to the present time have been added thereto, harmonized to the Civil Code and to the amendments introduced in the mortgage law, and finally it is perfected, with the rules for procedure and for the application of the new precepts contained in said law.

Some explanation of these rules at the present time appears particularly necessary, as the convenience and scope of the other innovations were explained at the time the reform of the law, which was favorably considered by the Cortes, was proposed.

The procedure permitting sellers of agricultural implements to make use of the advantages allowed them by Article 112 of the law is regulated by a detailed statement of the requisites necessary for the

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execution of instruments and the proper records, so as to prevent any difficulties.

With regard to the record of small estates, the provisions contained in Article 3 of the law are elucidated, perhaps unnecessarily, so that it can be well understood that contracts involving real estate, the value of which does not exceed 300 pesos, enjoy the same advantages as those regarding property rights of any kind whatsoever, and that inheritances of less than 2,500 pesos in value, when no partitions thereof take place, are governed by the same provisions as those requiring a formal act of partition.

Article 128 of the law declares that the regulations will fix the complementary details of the new procedure established for the collection of mortgage debts by Article 127 et seq. This amendment being one of the principal ones, and the manner of its application having been reserved to the regulations, it has been decided that in the instrument establishing the loan, the estimated value of the estate shall be stated, the right to new appraisements in the future being renounced, and that the day on which the obligation falls due be fixed in a definite manner; that all payments, which must be shown by notarial instruments, be recorded in the Registry by means of marginal notes, and that the petition to make the credit effective be expressed in terms commensurate with its great importance, including a copy of the instrument establishing the loan and of the certificate of the Register, which shows the actual status of the debt the collection of which is demanded.

After the formal demand for payment has been decreed, which shall be done once only, subsequent creditors shall be notified of the demand, so that they may be present when the public sale takes place, should they so desire.

The failure to attach mortgaged property does not extend to other property against which said creditor brings his action. In such case it shall be necessary to follow the proper requirements of the Law of Procedure, only shortening and simplifying them to secure the effectiveness of the mortgage.

Thirty days after the formal demand for payment has been made, a notice of the auction shall be published in the "Gaceta" of the proper Island, and after said auction has taken place, if the debtor does not demand that the estate be awarded him for the amount agreed upon, he may request other auction sales with prudent reductions of the minimum acceptable, reserving the total sum of all other obligations contracted prior to the mortgage security of his debt. Such provisions of the law of Civil Procedure shall be followed which are best suited to this most summary procedure to secure all rights. Article 413 of the law repeals other articles conflicting therewith, even when they do not refer to questions of mortgages, and the regulations must subordinate themselves to the letter and spirit of the latest provisions.

The entire section regulating the executory procedure for the collection of mortgage debts conforms to the ordinary system of judicial proceedings, so far as is permitted by the careful innovations which the law has desired to introduce, to release debts from the formalities and ceremonies which frequently sacrifice on the altar of fraud, that justice which it was most particularly desired to respect. We start from the principle that a mortgage record contained in a Registry defines a state of a right no less worthy of a presumption of inherent

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and conclusive legality than that other state which follows a decree of sale in the foreclosure action, with weaker securities and fixed or privileged exceptions and defenses. The greatest care was taken to insure the ease and efficacy of compulsory proceedings, under the responsibility of the claimant, and instead of permitting this intention, of so vital importance to credit, to be frustrated by possible contentions, which in every case would be restricted or imperfect, everything has been reserved which can and must be inconsistently interpreted, so that any person may bring the question up in a declaratory suit, which can be done at any time, and a final judgment thereon secured by the measures which are added to the ordinary procedure to insure the compliance of the same.

In establishing means to release estates from incumbrances which are not recorded in accordance with Article 349 of the law, the unjustifiable statement is made that incumbrances which are not in the possession of the person who had them recorded thirty years before, can not be the basis of said proceedings, notwithstanding that they are in the possession of his legal representatives, although not recorded.

The separation established by Article 397 of the law between records of ownership and those of mere property rights entered in the old books is explained with the greatest clearness, providing in its first paragraph that the former may be transferred at any time, and the latter, in accordance with paragraph 2, only within the period of one year, if they are to prejudice third parties.

The scope of the first and last paragraphs of the same article is also made clear, the former providing that the old entries must be transferred to the new books if they are to prejudice third persons, and the latter that, even if they are not transferred, they shall continue effective between the parties.

The necessary precautions are also adopted to prevent these provisions from being avoided, and the transfer is regulated by all the provisions appearing necessary.

The most summary procedure is ordered for the conversion of entries of possession into records of ownership. To the models which for the uniform and correct application of the law have always accompanied the regulations, models the number and variety of which for the Philippines greatly exceed those for the Peninsula, another one of marked practical convenience is added, consisting of the papers of the proceedings regarding notices of possession, so that they may comprise all the details required by the Mortgage Law, thus avoiding any difficulties which may be caused by its deficiencies. This model has no didactic character, nor is it made public for the officials who have a knowledge of the precepts to be applied, such officials being often substituted or replaced by individuals who are not lawyers. It would be useful in these cases, and will always serve as a detailed official model for interested persons, which at the same time will unify the practice and understanding of the law enacted.

Leaves of absence for Registers are regulated, avoiding their frequent recurrence in the Islands, and limiting the duration of their absence from the Islands, which was excessive; rules already in force are incorporated and there is avoided the inopportune application of provisions enacted for other officials and inappropriate to the office of Register.

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The rules for leave of absence of Registers of the Peninsula are given, having absolute regard for the jurisdiction of the Secretary of Grace and Justice.

Regarding the new procedure which shortens the periods for general assignments and the appointment of temporary Registers, which will greatly benefit good service, the report of the full Council of State has already been heard, whose proposals, with slight modifications, are embodied in the new regulations.

The previous ones contained may references to various matters which pertained to other legal matters, a system which hinders the dispatch of business. This evil is avoided by reducing the citations to such provisions which are not pertinent to the subject-matter of the regulations, embodying those referring to competitive examinations for Registers of property, and for positions in the Notarial and Registry Division, at the same time introducing in the latter some reforms suggested by experience.

The statistical service requires a great impetus because of its great usefulness, and this is secured by a slight increase in the clerical force of the proper Division of the Department. The interesting information which is to be gathered and arranged in the future, with a comprehensiveness and scope which this service does not possess among ourselves, suggests, perhaps, the publication of "Annual Reports" which would contribute to a general knowledge of our colonies, greatly assisting the mission of the governing officials, as well as cementing the relations between them and the Peninsula.

Temporary provisions corresponding to the character of the subject-matter regulate the classification and the proper bonds of Registers; the period of one year during which implied mortgages in Cuba will be open to the provisions of the new law, the closing of "Anotadurias" in the Philippines, the unification of the eligible lists for filling Registries, and some other questions such as that of "haciendas comuneras" in Cuba.

As the Mortgage Law must be put into operation, twenty days after its publication in the respective official Gazettes has been concluded, in accordance with the provisions contained in Article 1 of the Civil Code and of the Royal Decree of July 31, 1889, the annexed Regulations, indispensable for the execution of the former, will become effective simultaneously, a distinct period of twenty days not being counted for this purpose. In Cuba, in Puerto Rico, and in the Philippines, respectively, and in each case the substitution of the actual provisions for the new ones, of the law as well as of the regulations, must take place simultaneously.

The unextendible time in which these Regulations are to be put into operation, as has just been stated, and the legal necessity of submitting them to the Council of State to make them final, requires that they be published at present as provisional in character, as has been done for similar reasons.

In view of the foregoing considerations, and in accordance with the Council of Ministers, the undersigned has the honor to submit, for the approval of Your Majesty, the following draft of a decree.

Madrid, July 18, 1893.

Madame:

At the Royal Feet of Your Majesty.

ANTONIO MAURA Y MONTANER.

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GENERAL REGULATIONS FOR THE EXECUTION OF THE MORTGAGE LAW FOR CUBA, PORTO RICO, AND THE PHILIPPINES.

TITLE I.—INSTRUMENTS REQUIRING RECORD.

ARTICLE 1. Registries of real estate shall be divided into three classes, according to the amount of fees collected by them. The classification of Registries may be changed every ten years, according to the results of experience during the last five years, and after the formalities prescribed in the following article, necessary for the transfer of their location, have been complied with.

ART. 2. The Government may order the change of the location of Registries, subject to the following rules:

First. That reasons of public convenience exist sufficiently proven in the proceedings which for this purpose are instituted in the Registry and Notarial Division of the Colonial Department.

Second. That in said proceedings a hearing be given to the municipal councils of towns situated within the jurisdiction of the Registry.

Third. That the Register of property, the Judge of First Instance, the Governmental Division of the proper Audiencia, the Governor of the Province, and the Governor-General report as to the usefulness, advantages, and disadvantages of the transfer.

Fourth. That the Council of State be heard.

ART. 3. When the transfer of the seat of Registry has been ordered, in accordance with the provisions of the preceding article, the President of the Audiencia shall issue the orders necessary to carry it out immediately, proceeding so that due compliance may be given to the rules mentioned in Articles 6, 7, and 8 of these Regulations, with such modifications as are required by the nature of the case.

ART. 4. The provisional transfer of offices shall be permissible when Registers, by reason of extraordinary circumstances, or when the town is occupied or threatened by enemies, are prevented from effectively discharging their duties, or when in discharging them they would be obliged to recognize as legal, the instruments or documents authorized by the enemies.

With the exception of these cases, Registers shall not be forced to leave the locality where their office is located, and they shall be entitled to a reward if, continuing to discharge their duties and confining themselves thereto, they secure the preservation and custody of the books and documents of the Registry. This reward shall be considered as a special reward, for all the purposes of Rule No. 1 of Article 303 of the law.

ART. 5. Registers who find themselves in the situation referred to in the preceding article shall request the transfer of the office through a communication addressed to the judicial authority previously delegated to inspect the Registry, so that said official may designate the town or locality where it is to be transferred to. Said official shall

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immediately communicate it to the President of the Audiencia, stating at the same time the safest place in his judgment, so that the President may decide what may be deemed proper. If the urgency of the case requires it, the official may himself fix the place to which the offices are to be transferred, subsequently giving an account thereof to the President.

The offices should not be located outside of the territorial limits of the Registry. If this can not be effected and their transfer is made to a place in a different territory, the authority of the President of the Audiencia shall be indispensable for this purpose.

ART. 6. After the provisional transfer of a Registry has been ordered, it shall be communicated to the Governor-General and to the Governor of the proper province, and shall be published in the official newspapers of the corresponding island, stating the date of its establishment, and the date it was opened to the public, in the locality to which it has been transferred.

These facts shall also be communicated to the Colonial Department.

ART. 7. The transfer shall always be made at the expense and under the responsibility of the Register, who, should he consider it indispensable, may request the assistance of the authorities for the due protection of the books and documents of the Registry.

The following rules shall also be observed:

First. In closing the Registry on the day immediately preceding the date of the transfer, the Register shall make a record of its closure in the proper form, adding the following words before the date:

And this Day Book shall not be reopened until the transfer of this office to ——— has been made, at which place the Registry shall continue temporarily located, according to an order from ———.

Second. After the Register and his office have been established in their new locality, he shall advise the official who makes the inspections to this effect, who shall make an extraordinary inspection as soon as possible, the only purpose of which shall be to make a general inventory of all the books and packages of which the Registry is composed, so as to be able to state at any time the number and condition of the same after their transfer, being permitted, for the sake of brevity, to refer to his last inspection or inventory if the actual condition of the office can be understood therefrom.

Third. After the inspection has been concluded, the Delegate shall fix the day on which the new Registry is to be opened, ordering that it be announced with the greatest publicity and with proper previous notice.

Fourth. If some book or document appears to have been lost, the Delegate shall proceed as is proper according to law, taking into consideration the provisions contained in Title XV of the law. At any rate, and no matter what the results, the President of the Audiencia shall be advised thereof.

ART. 8. When the President of the Audiencia orders the temporary transfer of a Registry, he shall designate in accordance with the provisions of articles 269 of the law and 309 of these regulations the judicial authority which is to be delegated to inspect said office.

ART. 9. As soon as the extraordinary conditions which caused the temporary transfer have disappeared, the Register shall thus advise

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the President of the Audiencia, through his Delegate, so that the President may authorize him to return to the town which is the seat of the Registry. Should the President consider that those conditions have disappeared, he shall authorize him to do so, the same rules being observed which are prescribed for the transfer, with the changes necessary in the entries in the Day Book showing the return.

ART. 10. The days following the closing entry mentioned in Article 7 until, in accordance with the order of the Delegate, the Registry is opened to the public in the town to which it was transferred, shall be considered as days on which no work can be done. During these days the fixed period established for the operations of the Registry shall be suspended.

ART. 11. When in changing the territorial limit of a Registry it is necessary to add thereto a new town or rural subdistrict, the Governor-General of the proper Island shall fix the date from which the documents relating to estates located in the annexed town or subdistrict are to be presented to said Registry, being published with the proper previous notice in the official newspapers.

To effect the annexation mentioned the rules prescribed in the following articles shall be observed:

ART. 12. The Register of the subdistricts to which the town belongs, from which the removal took place, shall deliver the books, documents, and other objects pertaining thereto, after they have been closed in the manner which shall be stated, and after an inventory has been made, setting forth—

The number and class of books delivered.

A literary copy of the entry of closure.

The number and character of the other documents and files delivered.

The date of the delivery.

This inventory shall be made in duplicate; both copies shall be signed by the Register and the Judge of First Instance, one copy being kept in the Registry of the town from which the removal took place, the other one being sent, together with the books and papers in question, to the Register of the subdistrict to which said town is annexed.

ART. 13. Decrees ordering cautionary notices and copies of instruments of cancellation shall be understood as included among the documents referred to in the preceding article. All of them must be transmitted to the Register of the subdistrict to which the town is annexed, if they refer exclusively to states situated within its municipal district; otherwise they shall remain on file in the original Registry.

The indices referring to the books transferred shall also be turned over, should they not contain any entries referring to other books which are to be retained and which form a portion of the old Registry.

Should said indices contain any data relating to other towns, the Register shall keep them in his office, but he shall make an abstract from the modern indices of city and country property of the data relating to the town from which the removal took place, and shall send it, together with the books, to the Registry to which it is annexed, which, in view thereof, shall make the necessary additions to the indices for *estates* of his Registry.

The latter official shall also make additions to the indices for *persons*, taking necessary data from the new books.

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He shall add up the old indices in a similar manner, making use for this purpose of the same books or of the statements or abstracts of old entries which are sent him in their place.

ART. 14. The closing entry of the books relating to the town from which the removal took place shall be made on the date fixed by the President of the Audiencia, and if this can not be completed on said date the necessary hours of the same and of the following days shall be taken, even when they are days on which business should be suspended.

From the date fixed for this purpose no entry shall be made in the books of said town, nor shall any document referring to the same be admitted which is presented for entry referring to said town, but must be presented in the Registry which in the future the town is to form a part of.

Documents which have been presented previously and are awaiting record on said date shall be presented to the Register of the latter subdistrict, so that he may proceed in accordance with the Law and these Regulations.

The Register within whose territory was the town from which the removal took place, shall transmit with the documents above mentioned, a literal and certified copy of all the entries contained in the Day Book relating to documents presented during the thirty working days prior to the closing entry, and which refer to estates situated wihin said municipal district.

ART. 15. The closing entry shall be made in the presence of the Judge, Register, and representative of the Department of Public Prosecution, the last two making a certificate on the back of the title-page of each book, showing—

First. The total number of folios contained in the book and its state of preservation.

Second. The number of folios written on, and the number totally blank.

Third. The number of folios containing blanks between entries, or having blots, corrections, erasures, or interlineations thereon, or they shall state that none such were found.

Fourth. The number of estates recorded, and of the entries relating to each one, stating the total number of entries in each volume, by entry being understood, for this purpose only, marginal notes and references made on the pages relating to each estate.

The Judge shall examine the certificate, and should he find it correct, he shall subscribe it with his signature and rubric.

ART. 16. After the closing entry and inventory have been made, the Delegate shall immediately inform the President of the Audiencia thereof, who in his turn shall advise the Colonial Department; he shall also inform the Register of the subdistrict to which the town is annexed, so that the latter, either personally or through his substitute or some Registry official, may send for said books and documents after they have been found to conform with the inventory, giving the proper receipt therefor, which he shall sign at the foot of the duplicate of the same. The delivery shall be effected in the presence of the Delegate before whom said Register, or the person representing him, shall make the proper statement with regard to any differences he may perceive between the books and documents delivered to him and the inventory.

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ART. 17. The Register of the district to which the new town is annexed, must collect the books, documents, and files relating to the town annexed in the shortest possible time, always within fifteen days from the date he receives notice of the conclusion of the inventory, which period may be extended for just cause by the President of the proper Audiencia.

If said period has elapsed without this being done, the other Register shall deliver them to the Delegate, who shall transmit them with due precaution to the Delegate of the Registry to which the town is annexed, so that the latter may deliver them to the Register. All this shall be done at the expense and risk of the latter, and without prejudice to the responsibility incurred by his negligence and to the penalty he has subjected himself to, which shall be imposed upon him by the President of the Audiencia.

ART. 18. As soon as the Register gains possession of the books, documents, and files of the town, he shall inform the President of the Audiencia of this fact, also stating the time he requires to complete the indices. If, on account of not having finished the indices or not having received the books, he can not make definite records within the period mentioned in Article 56 of these Regulations, he shall act in accordance with Article 42, No. 9, of the law.

ART. 19. The general and correlative numbering which the books relating to the town from which the removal took place bore in the old Registry shall be replaced by that corresponding to the new Registry, the first of said books bearing the number immediately following the last one opened in said office, preserving the special correlative numbering of the municipal district.

ART. 20. The titles of the books of the Registry of property relating to the new town shall be corrected by the addition thereto before the heading at the beginning: "Registry of property of ——— (the new one), formerly of ———," and after the last line of the title, "Volume ——— of property of ——— (the new one)."

ART. 21. The administrative remedies against the suspension or denial of an entry by the old Register of documents relating to the town from which the removal took place shall be presented to the Delegate of the new Registry, and any which are pending shall also be sent to the same person.

ART. 22. When the cause which gave rise to the annexation of a town is the abolition of its municipality, to incorporate it into another pertaining to a different Registry, the books of the municipality abolished shall continue to be kept in the same manner as formerly, being considered as a new section of the municipal district into which it is incorporated.

The provisions contained in the preceding paragraph shall also be applicable, in case the annexation is made to a municipality located within the territorial limits of the Registry.

ART. 23. If in the same instrument property located within a territory belonging to different Registries is alienated or encumbered, it shall be recorded in the proper Registry, its record being effective from the date of the presentation of the instrument, in so far as the property referred to therein is concerned. If an estate is located within the territory of two or more Registries, the record shall be made in each one of them, but only including therein that part of the estate which is located within its limits.

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ART. 24. All real estate and property rights thereto may be recorded, without exception, whether belonging to private parties, to the State, to the province, to the municipality, or to civil or ecclesiastical corporations.

ART. 25. Exceptions to the record required by Article 2 of the law are:

First: Property which belongs exclusively to the eminent domain of the State, and which is for the use of all, such as the shores of the sea, islands, rivers and their borders, wagon roads, and roads of all kinds, with the exception of railroads; streets, parks, public promenades, and commons of towns, provided they are not lands of common profit to the inhabitants; walls of cities and parks, ports, and roadsteads, and any other analogous property during the time they are in common and general use, always reserving the servitudes established by law on the shores of the sea and borders of navigable rivers.

Second. Public temples dedicated to the Catholic faith.

ART. 26. If any of the property embraced in the preceding article, or any part thereof, should change ownership, becoming the private property of the State, provinces, towns, or public establishments, it shall be recorded immediately, if it is to continue inalienable, and in accordance with Articles 42 et seq., if they are to be alienated.

ART. 27. In accordance with paragraphs 1, 2, and 3 of Article 2 of the law, not only must instruments be recorded creating, acknowledging, conveying, modifying, or extinguishing ownership or property rights mentioned in said paragraphs, but also any others relating to rights of the same character, such as the acquisition of estates, half of which are to be reserved on account of entail, definite concessions of mines, railroads, public works, water, pasture, and other similar rights, awards in payment of debts in accordance with the proceedings in general assignment or bankruptcy, concessions of crown lands, the right of antichresis, that of reconveying estates sold with a covenant of resale, or, in fact, any legal instrument or contract, which, without having a proper name in law, modifies at once, or in the future, some of the privileges of the ownership of real estate or property rights.

ART. 28. The obligations to transfer to another person the ownership of any real estate or property right, or of creating on either a right of the same character, shall not require record. Neither shall the obligation to execute in the future any of the contracts embraced in the preceding articles require record, unless the personal obligation in either case is secured by a realty.

ART. 29. Final decrees, which must be recorded in accordance with the provisions contained in the fourth paragraph of Article 2 of the law, are not only those which explicitly declare the incapacity of some person to administer his property, or modify in the same manner his civil capacity with regard to the free disposition of his fortune, but also all of those which legally produce some incapacity, although they do not declare it in a positive manner, such as decrees containing a declaration of bankruptcy or general assignment.

ART. 30. The provisions contained in the fifth paragraph of Article 2 of the law, with regard to the entry of leases, shall also be applicable to sublettings, subrogations, transfers, and releases, provided they come within the conditions contained in said paragraph; but in

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such cases no new record shall be made, but a marginal note opposite the one of the original lease, which had already been made.

ART. 31. Real estate and property rights owned or administered by the State and civil corporations shall at once be entered in the Registries of property of the subdistricts in which they are located.

ART. 32. The Administrative Departments shall order the corporations, offices, or persons depending on them, who enjoy, or who have charge of the realty mentioned in the preceding Article, to demand the proper records, and shall furnish them with such documents and information as may be necessary.

ART. 33. Whenever there exists a written title of the ownership of the State or the Corporation to the property to be recorded, in accordance with Article 31, it shall be presented in the proper Registry, and by virtue thereof a record of ownership in favor of the person who appears to be the owner shall be demanded, which must be granted, if it should be proper, in accordance with the rules established for records of private persons.

ART. 34. Should no written title of the ownership of said property exist, an entry of possession shall be demanded, which shall be made in the name of the State, if the latter should own it absolutely, or in favor of the corporation which actually has possession, or which had possession until the Administration took it into its custody.

ART. 35. In the record of ownership as well as in the entry of possession, the last grantor as well as the actual status of the possession of the recorded property shall be stated.

ART. 36. To make the entry of possession, the chief of the dependency in whose charge is the administration or care of the estates which are to be recorded, provided his office carries with it public authority or the right to certify, shall issue a certificate in duplicate, in which, referring to the inventories or to the official documents which are in his possession, he shall state:

First. The character, location, superficial area, boundaries, denomination, and taxes on the estates or rights that it is desired to record.

Second. The legal character, value, conditions, and charges on the property rights in question, and the character, location, bounds, and name of the estate on which said right is charged.

Third. The name of the person or corporation, when it appears, granting the realty or property right.

Fourth. The time the State, province, town, or institution has had possession thereof, if it can be exactly or approximately fixed.

Fifth. The public service or object to which the estate is destined.

If any of these details can not be stated, this shall be mentioned in the certificate, indicating them.

These certificates shall be executed on stamped paper, the draft thereof remaining countersigned in its proper record of proceeding.

ART. 37. When the official in whose charge is the administration of the property, should have no public authority nor the right to certify, the certificate referred to in the preceding article shall be issued by the nearest of his hierarchical superiors who can do so, being furnished for this purpose with the necessary information and official data.

ART. 38. The two copies of the certificate mentioned in Article 36 shall be forwarded immediately by the official issuing it to the proper Register, requesting the proper entry of possession.

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ART. 39. Should the Register give notice in the certificate of the omission of some indispensable requirement for the record, according to Article 36, he shall return both copies, giving notice of said omission, after having made the entry of presentation, and without making a cautionary notice. In such case new certificates shall be issued, in which said omission shall be corrected or stating the insufficiency of the data needed to do so.

ART. 40. After the record of ownership has been made, Registers shall return the instrument presented therefor to the offices or officials from whom they were received. When the possession is entered, the Registers shall retain in their possession one of the two copies of the certificate, and they shall return the other one, with the proper note of "Recorded," etc.

ART. 41. Property possessed by the clergy shall be entered in the same manner, as well as that which is returned to them and which is to remain in their possession as inalienable; but the certificates of possession which may be necessary for this purpose shall be issued by the Bishop of the Diocese.

ART. 42. The real estate or property rights owned or administered by the State or civil or ecclesiastical corporations, and which must be conveyed in accordance with the laws in force, shall not be recorded in the Registeries of property until their sale or redemption in favor of private parties takes place.

ART. 43. When any of the property is to be sold, or any of the rights mentioned in the preceding article is to be redeemed, the Administrator of the Treasury (Administrador de Hacienda) shall search for and unite to the bill of sale or writ of redemption the title deeds of said property.

Should said title deeds not exist or not be found, this fact shall be stated in the said record of proceedings, and said Administrator shall issue the certificate in duplicate mentioned in Article 36, by virtue of which an entry of possession shall be demanded and made before the day fixed for the public sale, or before the redemption is effected if a property right is in question, and in all cases proceeding in accordance with the provisions of the preceding articles.

ART. 44. When the bill of sale or writ of redemption is executed, the title deeds of ownership, should they exist, or the duplicate of the certificate of possession, which otherwise should have been returned to the Register, according to the provisions of Article 40, shall be delivered to the purchaser or redeemer.

ART. 45. Those who, from the date the mortgage law went into operation, should have acquired from the State any conveyable property or redeemed any annuities (censos), shall have a right to demand the deeds thereto, or, in default thereof, the certificate of possession mentioned in Article 36, with the Register's note stating that the respective entry has been made.

For this purpose Administrators of the Treasury shall immediately request the record of all property embraced in this case, forwarding the title deeds, should there be any, or the certificates of possession.

ART. 46. The purchasers of conveyable property and the redeemers of annuities (censos), also conveyable, who acquired their right before the Mortgage Law went into operation, may have them recorded

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in their favor by presenting only the bill of sale or writ of redemption, whether it is of a prior or a subsequent date.

ART. 47. When the State or civil corporations acquire some real estate or property right, the Governors of the provinces or the central Chief under whose dependency they are to be administered or possessed, shall take care that the titles of property be collected, should there be any, and that at any rate the entry which is possible, be made, either of ownership or of mere possession.

ART. 48. The authorities who administratively decree the award to the Treasury of real estate or of property rights in payment of debts, shall procure their record of ownership in favor of the State, seeing for this purpose that a certificate be presented to the Register embracing the decree and the other matters necessary for records, according to Article 9 of the law.

ART. 49. If in the case stated in the two preceding articles the realty or property right does not appear recorded in favor of the debtor or assignor, and in addition thereto the deed thereof is not in existence or can not be found, the Administration shall issue the certificate mentioned in Article 36, with reference to the proceedings of attachment or award which may have been had, and shall demand of the Register, by virtue thereof, that he issue the certificate which must precede the record or entry in favor of the State.

ART. 50. By title deed shall be understood, for all the purposes of the record, the public instrument, which is *prima facie* evidence *inter vivos* or *causa mortis*, on which the person in whose name said record is to be made bases his right to the realty or property right.

Should said person possess more than one title deed, because, either being an heir or legatee, he bases his right on a testament, and on a partition, or, owning property, his right having been questioned, he is supported in his ownership by a compromise or final decree, or for any other cause, all the deeds shall have to be recorded, including them, if possible, in one entry.

ART. 51. Authentic documents for the purposes of the law shall be those which, serving as title deeds for the ownership or property right, are issued by the Government or by a competent authority or official, and which must be evidence in and of themselves.

For the intents and purposes of the second and following paragraphs of Article 3 of the law, the title, which can be obtained in similar cases with regard to property rights of which the law treats generically, shall serve for the record of transfers or incumbrances relating to estates the individual value of which does not exceed 300 pesos; and when the question is of one or more heirs who are so *pro indiviso* and a partition is not possible or necessary, in inheritances of less than 2,500 pesos, the notarial instrument obtained in the manner prescribed by the article above quoted may also serve as a title.

ART. 52. Documents executed in foreign countries can only be recorded after they have been officially translated in the Translation Bureau or by any other official who is competently authorized therefor.

Judgments rendered by foreign Courts can not be recorded until the Supreme Court orders their execution, in accordance with the proper provision contained in the Law of Civil Procedure.

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TITLE II.—RECORD—ITS METHOD AND ITS EFFECT.[a]

ART. 53. By legal representative of a person interested in a record, for the purpose of demanding it in accordance with the provisions contained in Article 6 of the law, there is understood such person as is to represent him in all legal acts, in accordance to law, such as the father or the mother representing the child still under their authority, the husband representing the wife, the guardian, and the agent, even if the appointment of the latter is verbal or implied.

As agent shall be considered, for the purpose of presenting documents in the Registry and demanding a record, any person to whom the interested party intrusts this commission.

ART. 54. When the person who requests said record does so in the capacity of agent or representative of the person who, in accordance with Article 6 of the law, has a right to demand the former, the name of the principal shall be stated in the entry of presentation, and whether the appointment be verbal or written.

ART. 55. The clerks, officials, and assistants of the Registry of property can not present any document for entry in the Registry as representatives of the interested persons.

ART. 56. Records shall be made by Registers within fifteen days following the date of the presentation of the receipt showing that the fees have been paid; and should none be due on the instrument, it shall be so stated in the record, within the same period, computed from the date of the entry of presentation.

If this period has elapsed without the entry having been made, the interested party may complain to the Delegate and demand an investigation of the Registry proving the delay, and entering claim against the Register for any resulting damages.

The Delegate, in view thereof, shall order the entry made, and if the Register does not prove that some important, unavoidable obstacle existed which prevented it, he shall transmit a report to the President of the Audiencia, so that the proper penalty may be imposed on him.

ART. 57. To insure the record in the case mentioned in Article 7 of the law, the Notary, or the authority or official who issues or certifies to the instrument in which the right of a third person is reserved, shall forward the documents necessary to make said entry, directly to the Register.

The expenses incurred in the transmission of said documents shall be defrayed by the parties to the instrument or contract, containing the reservation of the right of a third person.

When the instrument or contract containing said reservation is certified abroad the Spanish diplomatic or consular agent shall forward the document or documents to the Department of State, who shall turn them over to the Colonial Department for the proper proceedings.

If the instrument or contract referred to in the preceding paragraph is certified in any part of America, to be used in the Registries of Cuba and Porto Rico, or in any part of Asia or Oceania, to be recorded in the Philippines, the proper Spanish agent shall transmit the document or documents to the proper Governor-General, who shall forward them to the President of the Audiencia of the territory for the necessary proceedings.

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[a] See G. O. No. 192, headquarters of the Army, A. G. O., Dec. 30, 1898.

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The Register, in view thereof, shall make the entry, if the instrument or contract is not subject to a tax, according to the note made in the instrument, proceeding for the collection of his fees in accordance with the provisions contained in Article 336 of the law. If a tax is to be charged, the Register shall make the entry of presentation, and shall not make the record until payment for the former has been made.

When the instrument or contract refers to property located in the territory of different Registries, the Register shall officially transmit to the proper Registry the document to be recorded, after having made in his own entry of presentation advising the person interested to this effect. The other Registers shall proceed in a similar manner, the last one returning the document to the first.

The official transmission of the document which Notaries, Officials, or Registers must make, according to the cases mentioned, shall be through the representative of the Department of Public Prosecution, so that the latter may make the proper presentation.

ART. 58. Registers shall be careful under their responsibility in making the entry, or record, as the case may be, of the instruments or contracts referred to in the preceding article, that an express mention be made therein of the property right reserved, and of the persons to whom the reservation is made.

ART. 59. To number the estates recorded in accordance with the provisions contained in Article 8 of the law, the first one of which the ownership is entered in the new Registries shall be designated by Number 1, and with the following numbers in strict order of dates the ones which are successively entered under the same conditions.

Said numeration shall always be made in figures.

ART. 60. When an estate designated with its proper number in the Registry is subdivided, the part separated in favor of the new owner shall be entered with a new number, a brief statement of this fact being made in the margin of the old record with a reference to the new one.

When two estates are joined to make a single one, the latter shall be recorded under a new number, a statement to this effect being made in the margin of each one of the previous records relating to the ownership of the estates which are joined. In the new record reference shall also be made to said entries as well as to the incumbrances previously existing on said joined estates.

ART. 61. The following shall be recorded under one number only, should the interested parties so request, being considered as a single estate in accordance with Article 8 of the law, and for the effects mentioned therein:

First. Rural property known as estates, coffee plantations, sugar plantations, meadows, farms, cattle farms, pastures, etc., which form dependent or joined property, with one or more buildings and one or several pieces of ground, wooded or not wooded, even if the latter are not contiguous to each other, nor to the building, provided they belong to the same series of estates and to one person only, or to several *pro indiviso*, or even when they are subject to the same incumbrances or property rights belonging to one or more persons, and composed of different lots or parts given in emphyteusis. For the purposes of the record, the direct ownership only shall be considered, even when several persons collect rents or annuities of an estate in the capacity of

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direct owners, provided said estate is not actually divided among them for this purpose.

Second. All town estates and all buildings, even when certain parts, rooms or floors, belong to different persons, whether in absolute or qualified ownership.

Third. Any building or place of shelter situated outside of towns, with all its dependencies and appurtenances, such as yards, covered passages, pigeon houses, etc., even when it belongs to several owners *pro indiviso*, is subject to incumbrances or property rights belonging to one or more persons, and when it is divided into lots or parts given in emphyteusis.

Fourth. Contiguous parcels of land, belonging to one owner or to several *pro indiviso*, even when they have no place of shelter and have not been conveyed in the same manner nor by the same person, and came into the possession of the last grantee through different instruments.

When the property right or incumbrance which affects all of the estates united, referred to in No. 1, should be divided into fractions, and the estates encumbered by each part are determined, the latter may be recorded apart from the others, and under a separate number, although all those which are affected by part of the incumbrance constitute one group among themselves.

If any of the groups of estates which may be recorded under one number, in accordance with the provisions of this article, should be located within the limits of two or more municipalities, the portion corresponding to each one shall be entered in its special Registry, a statement being made at the end of the record that the estates affected thereby, in conjunction with the others, whose numbers, folios and volumes shall be cited, constitute (the estate, coffee plantation, farm, etc.), with a statement of the name, should it have any, or otherwise the general name by which said group is known.

ART. 62. Records relating to each estate shall be numbered in the order in which they are made.

ART. 63. To indicate exactly the estates or rights which are the subject-matter of the records, Registers shall act in accordance with the provisions contained in Article 9 of the law, subject to the following rules:

First. The character of the estate shall be described, stating whether it is rural or city, and the name by which such estates are known in the province or town.

Second. The location of the rural estates shall be fixed by a statement of the district, subdistrict, or any other name by which the place in which they are located is known, their boundaries according to the four cardinal points, the character of the contiguous estate, and any details which will avoid its being confounded with others.

Third. The location of the city property shall be fixed by stating the town in which it is located, the name of the street or place, the number, should it have any, and if the latter is of a recent date, its former number shall also be stated; the number of the square, block, or quarter, the name of the building, should it be known by any special one, the bounds, and any other details which will serve to distinguish the recorded estate from another.

Fourth. The superficial area shall be stated in the manner in which it appears in the instrument and with the denominations employed

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therein; but if said measurement does not appear in the instrument, this fact shall be stated in the record.

Fifth. The character of the right recorded shall be indicated by the name given thereto in the instrument, and if none has been given it, none shall be expressed in the record.

Sixth. The value of the estate or right recorded shall be stated, if it appears from the instrument, in the same manner it is stated therein, either in money or in kind, or in any other manner. If said value has been arrived at by appraisement for the payment of the taxes, or if a use or annuity is in question which was capitalized for the payment thereof, the amount taken as a basis for the fees shall be indicated in the record.

Seventh. To indicate the extent of and incumbrances on the right which is to be recorded, a detailed and literal statement shall be made of all which, according to the deed, limits said right and the privileges of the grantee for another's benefit, whether it be a person determined on or an undetermined one, as well as the time when the obligations contracted will fall due, if those recorded are of this character.

Eighth. The liens on the estate or right which is affected by the immediate or mediate entry may appear either from a previous record or only from the instrument presented. In the former case their nature and number shall be briefly stated, indicating what number each one has, and the folio and *liber* of the Registry where they can be found: In the latter case they shall be copied literally, giving notice that they have not been recorded. If said liens appear from the instrument and from the Registry also, but with some difference between the two, said variance shall be noted.

Ninth. The names which must be stated in the record shall be expressed as they appear in the instrument, the Register not being permitted, even with the consent of the parties, to add or to omit any. To the name shall be added the age, status (whether married or single), profession, and domicile. Societies or public establishments shall be designated by the name by which they are known, stating their domicile at the same time, as well as that of the person who requests the record in their name, if it is not a society known by its firm name only.

Tenth. Any record of instruments or contracts for which taxes are due the State shall also indicate the amount thereof and the date and number of the receipt.

Eleventh. At the end of any record or notice the Register shall state the fees which were charged therefor.

ART. 64. In any record relating to estates of which the land belongs to one person and the building or the plantings to another, this fact shall be clearly stated.

ART. 65. Whenever any right previously created in realty, such as an annuity (censo), mortgage, use, and other similar rights are recorded for any reason whatsoever, there shall be stated the date of their creation, the name of the grantor, and the special incumbrances under which they were created, as far as they appear from the instrument, should they relate to a realty.

If these should appear from the original record of the right, subsequent ones shall only contain an indication thereof, with the

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proper reference to said record. Should no prior record exist, this fact shall be stated.

ART. 66. In records of mortgages the price at which the estate is valued by the contracting parties shall be stated, as well as a renunciation of any new appraisement or action brought for this purpose. The time of the maturity of the obligation shall also be stated with great precision and clearness.

Partial payments made by the debtor on account of the principal or interest of the loan shall be noted on the margins in the manner prescribed by Article 181 of these Regulations, it being permissible to prove them by a notarial instrument.

ART. 67. The assignment of a mortgage right or of any other property right shall be shown by means of a new entry, which shall make reference to the first one, citing its number and folio, names of the assignor and the assignee, and the other details which appear in the assignment, and which are common to all records.

ART. 68. In records of leases the price stipulated and the duration of the contract shall be stated.

ART. 69. Railroad, canal, and other public works of a similar character may be recorded at any time, presenting for this purpose the instrument by which the definite concession of the work was granted, be it a law, Royal Decree, or public instrument, presenting at the same time the other documents fixing or modifying the rights allowed the grantee.

ART. 70. If the record treated of in the preceding article should be made during the execution of the public work, additions or corrections may be made, when said work or any of its sections is completed, by virtue of the instrument setting forth the survey and the plan, or by any other documents by which a change is made therein or in the rights recorded.

ART. 71. The record of the concessions treated of in Article 69 must be made in the Registry of property within the bounds of which is located the beginning of the road or canal, a brief reference being made to this original record in the other Registries whose territory is crossed by the public work, in which, as well as in the corresponding books of the proper municipalities, the length of the ground covered shall be stated, and the conditions of the property rights which may be of private interest in those districts, it being unnecessary in any case to state the bounds of the contiguous estates or the prior record of the land granted for the construction of the road or canal.

ART. 72. The stations, warehouses, dams, bridges, aqueducts, and other works constituting an integral part of said road or canal, necessary for its existence and operation, do not require a distinct and special record, but shall be included in the general record or in the special ones of the public work itself, stating in each Registry the works located in the part of the line comprised within their jurisdiction. But other buildings and constructions, such as orchards, gardens, forests, plantings, and any other rural or city property, and property rights arising out of railroads, canals, and other public works which are the private property of the grantee companies, must be recorded specially and separately in the proper Registry, with the details and conditions required by law and by these Regulations.

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ART. 73. The original record of the railroad, canal, or public work must necessarily state whether the company to whom the concession was granted is or is not authorized to issue mortgage bonds payable to the bearer; and should it be so authorized, the amount of the principal fixed therefor, which determines the scope and limits of the powers of the company in this respect. If this authority is granted after the record has been made in the Registry, it shall be entered by means of a marginal note opposite the same, the Royal Decree authorizing the issue of said obligations serving as a basis therefor.

ART. 74. After the description of an estate has been made in its record of ownership it shall not be repeated in any other records or entries made in the Registry relating thereto, provided the name, location, superficial area, bounds, and other important details are stated in the same manner in the instrument presented for this purpose; but the number of the estate, of the record, and of the folio and *liber* of the Registry in which said description may be found shall be cited, adding any other details to complete it, and which appear from the instrument presented.

When all the details are not indicated in the same manner, a statement shall be made of only the ones at variance and a simple reference made to the other ones.

ART. 75. Records of any kind shall be made in the following order:

First. Description of the estate the subject of record, or a reference thereto, if proper, according to the preceding article.

Second. A statement of the encumbrances, should there be any.

Third. Name and title of the person transferring the right or the name of the corporation or legal person who is the last grantor thereof.

Fourth. A statement of the property right which it is desired to record, and of the interest on which it is based, if the estate itself is not alienated by the record.

Fifth. The name of the right transferred, and that of the person, entity, corporation, or organization to whom it is transferred.

Sixth. An exact copy of the conditions imposed upon the grantee or upon his successors which restrict the privileges of ownership in any manner whatsoever.

Seventh. A statement of the instrument presented to the Registry, indicating the Court or the name and surname of the notary or official who certified it, the place and date of its making and execution.

Eighth. The day and hour of its presentation to the Registry, citing the number and folio of the entry of presentation.

Ninth. The amount paid for Royal taxes and the number of the receipt, which shall remain in the possession of the Register, or a statement that the instrument or contract is not subject to said tax.

Tenth. The conformity of the record with the documents to which it refers, and a statement of the package in which those which must be filed may be found.

Eleventh. Date of the record and signature of the Register.

Twelfth. Fees of the Register.

ART. 76. For the purposes of the fourth paragraph of Article 2 of the law and Article 29 of these Regulations, the record of final judgments declaring incapacity shall be made in accordance with the rules of Article 9 of the law and 63 of these Regulations, applicable thereto, and shall also contain the following details:

First. Name, surname, and residence of the complainant.

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Second. Purpose of the complaint.

Third. The clause of the decision disposing of the question, indicating the Court which issued it, its date, and its final disposition.

Fourth. Proof of the publication of the incapacity and designation of the person who has been appointed to administer the affairs, if said person should be named in the decree.

ART. 77. Registers shall consider, in accordance with the provisions contained in Article 18 of the law, as legal errors in the documents or instruments which it is desired to record, all those affecting the form of the instruments, as well as the effectiveness of the obligations or rights contained in the same, provided they appear from the text of said documents or instruments or may be observed by a simple inspection thereof.

Those which do not state, or state without sufficient clearness, any of the details which according to the law the record must contain, under pain of nullity, shall be considered as comprised in Article 18 of the law.

ART. 78. The determination made by Registers, or, in a proper case, by the President of the Audiencia, of the legality of the instruments presented, of the capacity of the person executing them, or of the competency of the Judges or Courts ordering the cancellations, according to the provisions contained in Articles 18, 100, and 101 of the law, shall be limited for the purpose of refusing, suspending, or admitting the record, and shall not prevent nor prejudice the suit which may be instituted before the Courts with regard to the nullity of said instrument, or the competency of said Judge or Court, unless a judgment in cassation is rendered.

If the judgment rendered in said suit shows that the instrument was incorrectly classified, or the capacity of the parties thereto or the competency of the Judge or Court, the Register shall make the record or shall cancel the one that has been made, as may be proper, the new record bearing the date of the entry of presentation of the instrument which gave rise to these interlocutory proceedings.

ART. 79. Registers shall not only refuse to record any instrument which contains errors preventing it, making a cautionary notice thereof or not, as may be proper, but also, if it appears from said instrument that some crime has been committed, they shall give notice thereof to the proper judicial authority, forwarding the document containing it.

ART. 80. Registers can not themselves determine the legality of documents of any kind presented to them if they or their respective wives or relatives within the fourth degree of consanguinity or the second of affinity have any interest in said documents. For this purpose the notaries certifying them shall be considered as interested.

The legality of the documents referred to shall be determined under their responsibility by the representative of the Department of Public Prosecution, or, in his absence, by a lawyer of the subdistrict, who must be an adult, to either of whom, as may be proper, they shall be transmitted by the Register, the former receiving the proper fees according to the Schedule.

ART. 81. If the Register should not make the record demanded on account of an error in the instrument, and the interested party requests that a cautionary notice thereof be made instead, in accord-

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ance with No. 8, Article 42 of the law, a marginal note shall be made in the following terms:

The record (or cancellation) referred to in the adjoining entry is suspended, because the instrument (or judicial mandate) presented (here the errors which have been noted). And as this error may be corrected, I make a cautionary notice thereof in volume ——— of the municipality of ———, folio ———, estate No. ———. (Date and surname.)

If the error is one that can be corrected and the thirty days referred to in Articles 17 and 19 of the law have elapsed without the cautionary notice having been requested or the error corrected, a note at the margin of the entry of presentation shall be made in the following terms:

The adjoining entry, No. ———, is cancelled, the document presented having contained the error ———, or the errors ———, and thirty working days having elapsed without having been corrected or a cautionary notice thereof having been requested. (Date and surname.)[a]

ART. 82. In compliance with the provisions contained in the last paragraph of Article 66 of the law, and in the third paragraph of Article 246 of the same, if the interested person appeals from the determination of the Register, or if some consultation has been made regarding the taxes, if the thirty working days have not elapsed from the date of the presentation, a note shall be made at the margin of the entry of the latter in the following terms:[a]

The adjoining record remains in force until the objection entered or the consultation made has been decided. (Date and surname.)

If the determination made by the Register is definitely confirmed, the decision shall be communicated to him officially; and if within the fifteen working days following the date on which the person interested was notified of the decision the errors are not corrected, the Register shall officially cancel it.

Should the error be corrected, or should it be decided that the record should have been made, the Register shall do so if the instrument has not been entered in the Registry, and if it has been noted, he shall convert said entry into a record.[a]

ART. 83. If the defect in the instrument is such that the Register does not believe he should make a cautionary notice thereof in accordance with Article 65 of the law, he shall make a marginal note in the following terms:

The record (cautionary notice or cancellation) to which the adjoining record refers, is not admitted because the instrument presented (here the defects noted). And as said error does not appear to be capable of correction, a cautionary notice can not be made either. (Date and surname.)[a]

ART. 84. The assignee of any recorded right must enter the assignment in his favor, provided it has been effected by any recordable document. If the assignment has been made before the right is recorded in favor of the assignor, the assignee may demand the record in favor of the principal at the same time he requests his own.

Instruments of agreement and sale of crown lands shall be recorded in the names of the assignees, without requiring a prior record in favor of the State. The record of these instruments shall be obliga-

[a] See G. O. No. 99, headquarters' Department of Porto Rico, Apr. 30, 1900.

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tory, and they must be presented for this purpose within the period of one year, computed from the date of their execution.

ART. 85. Heirs and legatees can not record realty or property rights in their favor which have not been recorded by the decedents. The property or rights which come under this head shall be recorded in the name of the deceased person before being entered in the name of the person to whom they were awarded. This record shall be made at the expense of the estate and at the request of any of the interested parties or of the representative of the Department of Public Prosecution, if the heirship is vacant.

A prior record in favor of the principal shall not be necessary with regard to real estate and property rights that he may have acquired before the date on which the mortgage law went into operation, provided this is made to appear by the means indicated in Article 20 of the law.

ART. 86. Whenever a record or cautionary notice of real estate, which, on account of the death of a person, must pass to his heir or legatee, is requested without a judicial decree having been issued, the instrument proving the date of said death shall be presented and filed in the Registry.

ART. 87. Authenticated documents shall be considered for all the purposes of the second paragraph of Article 21 of the law, lease contracts of the last ten years, in which mention is made of the general title; judicial proceedings of possession, survey, or demarcation; decrees of summary action for possession, or any other documents which certify to and which expressly mention the property and their origin in terms sufficiently explicit in the judgment of the Register, the proper administrative appeal from his decision always being reserved.

ART. 88. Judges or Courts before whom an action is brought concerning the nullity of an entry or record shall inform the proper Register of this suit.

The Register, on the same day he receives the notice from the Judge or Court, shall make a marginal note against the entry or record in the following terms:

Suit against the nullity brought by N—— before the Inferior Court or Court of ——, Office of ——. (Date and surname.)

ART. 89. If the exception to the nullity is refused, the Court or Judge shall also communicate to the Register the decree in which it is refused, so that he may cancel the marginal note which has been made, by another contiguous one, stating:

The appeal of nullity indicated in the preceding note has been refused by a decree of such date. (Date and surname.)

ART. 90. After the nullity of an entry or of a record has been declared, the Judge or Court shall order it canceled and a new one made in the manner prescribed by the law.

This new record shall be effective from the date it properly should be, according to the respective cases.

TITLE III.—CAUTIONARY NOTICES.

ART. 91. The person who brings the action for ownership, referred to in case No. 1 of Article 42 of the law, may at the same time or subsequently request that a cautionary notice thereof be made, offering to indemnify any damages which may be caused the defendant thereby, should he win the suit.

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The Judge or Court shall order the notice made, if it is proper, at the time of beginning the action and within the period of three days if said action is subsequently begun.

ART. 92. Cautionary notices shall be made by an attachment of realty or property rights, ordered by a civil or criminal judgment, even when the former is only cautionary, the following rules being observed:

First. If the ownership of the estates attached appears recorded in the old or new books in favor of a person other than the one against whom the attachment was ordered, entry of the notice shall be refused, the provisions prescribed by the law and regulations for records refused on account of errors which can not be corrected being observed. The Registers in such case shall keep one of the copies of the judgment and shall return the other, with a memorandum of the refusal, clearly stating the reason therefor.

Second. If the ownership of the property attached is not recorded, the notice of the attachment shall be suspended, and in its place a cautionary notice shall be made of the suspension of the same, if said error is capable of correction.

Third. The persons interested in attachments may demand that the person who is considered the owner, or his representative in the proceedings, be required to correct the defect by having the omitted record made; and should he refuse to do so, they may request that the Judge or Court order it, if they have or can present the instrument requisite for this purpose.

Fourth. When, by virtue of a final decree, the sale of the attached property is ordered, the interested persons may also, if the owner refuses to have the record made, supply the lack of titles by the means established by Title XIV of the law.

Fifth. The interested persons may request in the same manner, in a proper case, that the attached property be sold at auction on the condition that the buyer make the record which was omitted, before the execution of the bill of sale, within a sufficient period to be fixed by the Judge or Court, taking all steps for this purpose that the person interested could have taken, in accordance with the provisions above mentioned. The expenses and costs caused by the refusal of the owner to make the record shall be defrayed by him.

ART. 93. Authorities who order the attachment of realty in administrative proceedings shall have cautionary notices thereof entered. For this purpose they shall order a certificate in duplicate to be presented to the proper Register, comprising the writ of attachment and other matters necessary for such entries, according to Article 72 of the law.

ART. 94. When the purchaser of an estate or right belonging to the State is declared a bankrupt, not having paid the price therefor within the proper time, a cautionary notice of this declaration shall be made, proceeding for this purpose in the manner prescribed in the preceding article.

ART. 95. The cautionary notice treated of in case number 3 of Article 42 of the law can not be made until, in the execution of the judgment, realty of the person against whom judgment is rendered is ordered attached, in the manner prescribed for summary actions for possession.

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ART. 96. The cautionary notice treated of in case number 4 of Article 42 of the law shall also be proper when some debtor is declared insolvent or bankrupt, in accordance with the proceedings prescribed by the Law of Procedure.

ART. 97. Any cautionary notices which can not be made except in accordance with a judicial decree, shall be made by virtue of the presentation in the Registry of the mandate of the Judge or Court, in which shall be comprised literally the special order in which it was decreed, its date, and the document or documents upon which said notice is based.

The mandate shall always be issued by the Judge or Court within whose territorial limits the Registry in which the cautionary entry is to be made is located, to whom other Judges or Courts shall transmit letters requisitorial to issue the mandates, when the Registry is not located within their own jurisdiction.

ART. 98. Cautionary notices may be demanded by the persons interested therein, in accordance with the law and these regulations.

ART. 99. Cautionary notices shall be proper—

First. When they are directly and specifically demanded or ordered; provided, that for this purpose a title deed, document, or mandate is presented to the Registry which can produce it, in accordance with Articles 19 and 42 of the law and other provisions of the same.

Second. When some record or marginal note is requested, which can not be made on account of some error susceptible of correction, or any other impediment insufficient to cause its refusal, if the interested persons request that said cautionary notice be made while the error is being corrected.

When a cautionary notice is ordered by a judicial mandate, which can not be made for good reasons, compliance therewith shall be suspended and a cautionary notice of the suspension shall be made.

All cautionary notices shall include the details stated in the following article.

The provisions of number 2 of this article, relating to marginal notes, shall be construed as being applicable exclusively to those which are not a necessary consequence of some record.

ART. 100. To make a cautionary notice of legacies by virtue of an agreement between the parties, according to the provisions contained in Article 56 of the law, a certified copy of the beginning, the ending, and proper clause of the will shall be presented to the Register, with a petition addressed to him, signed by the legatee and by the heir, requesting that said notice be entered, and fixing by common consent the property against which it is to be made.

When the notice is to be entered by virtue of a judicial mandate, the certified copy mentioned in the preceding paragraph shall be presented to the Registry, together with the mandate issued by the Judge or Court, in accordance with the provisions of Article 57 of the law.

ART. 101. When the heir and the legatee request, by common consent, that a cautionary notice be made of some legacy, they shall state in their petition the name, status (whether married or single), age, residence, and date of the death of the principal, as well as the fact of no testamentary proceedings having taken place, and that the inheritance has been accepted by the heir.

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If, in the latter case, the estate to be entered is not recorded in favor of the testator, a request must be made for its record, the title being presented to the Registry, should there be any, from which all the other details, which must be embraced in the notice, shall be taken.

Should there be no title, the ownership or possession shall be recorded by the means authorized by the law.

ART. 102. To serve the notice mentioned in Article 49 of the law on the legatees, in due form, the heir shall appear with his petition before the Judge or Court of competent jurisdiction, presenting a copy of the will and an inventory of the realty. The Judge or Court shall then order the notice served immediately, and after it has been served he shall order that the original papers be turned over to the interested person for such purposes as he may deem proper.

ART. 103. After thirty days have elapsed from the date of the notice, without the legatees having exercised their rights, the heir may request a record of the entire estate inherited, presenting to the Registry, besides his title, the original papers mentioned. If the legatees request that the notice be entered, the heir may also record the property which is entered, and which has not been specially bequeathed, but subject to the lien of said entry.

A record in this case, as well as in the case of all the legatees renouncing their right of entry, must refer either to the instrument containing the renunciation made by the legatees or to the notice, proceedings, and their result.

ART. 104. According to the provisions contained in Article 59 of the law, a cautionary notice in favor of agricultural creditors may be demanded by virtue of a written private contract. For this purpose the following shall be necessary:

First. That said contracts clearly state all details necessary to avoid doubts and questions regarding their fulfillment, the entry of those which are not compiled with the necessary clearness being refused.

Second. That all the persons interested in the entry appear in person at the office of the Registry, the Register assuring himself of their identity and of the authenticity of the signatures at the foot of said contract.

Third. That if the estate which is to be the subject of the agricultural loan is not recorded in the Registry as the property of the debtor, it be recorded with the necessary formalities, the entry being otherwise refused.

ART. 105. If the estate which is the subject of the agricultural loan is not recorded in the name of the debtor, and it appears from the instrument presented that it is subject to a property obligation, the Register shall make the record, but shall suspend the entry of the notice until the proceedings prescribed in Article 61 of the law have been instituted, or the proper agreement has been presented.

ART. 106. To institute the proceedings treated of in Article 61 of the law, the debtor shall address a petition to the Judge of First Instance of the subdistrict in which the estate is located, stating the works which the latter requires, the approximate cost thereof, and the actual value of said estate; and requesting that the persons who may have some property right in the realty be cited, so that they agree thereto, or state what may be advisable for the protection of their

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rights. This petition shall be accompanied by a certificate of the appraisement made by experts, and by the documents wherein appear the names and rights of the persons to be cited.

The Judge shall order the citation made with the formalities prescribed in Articles 270, 271, 274, and 525 of the law of Civil Procedure for Cuba and Puerto Rico, and Articles 254, 255, 258, and 509 of that for the Philippines.

If any of said persons is unidentified or is absent, his place of residence being unknown, the representative of the Department of Public Prosecution must be cited.

ART. 107. The persons cited in accordance with the foregoing article may agree to the demands of the owner, in which case the Judge shall issue a decree authorizing the entry, or they may oppose them as to the value at which the estate has been appraised, as well as the works which it is desired to execute, if, as a result, their rights are not sufficiently protected.

ART. 108. The persons opposing the appraisement or the works shall appoint an expert, who, together with the one appointed by the owner, shall correct the appraisement or make a report on said works.

For the appointment of this expert, and to overcome the disagreements which may occur, the rules established by Article 613 et seq. of the law of Civil Procedure for Cuba and Puerto Rico, and Articles 597 et seq. of that for the Philippines, shall be observed.

ART. 109. After the report of the experts, if the opposition referred to the appraisement, the Judge shall issue a decree authorizing the entry and declaring the value of the estates which are the subject of the agricultural loan. If the opposition referred to the works, the Judge shall order the interested persons and the experts to appear before him in an oral trial, for the purpose of securing an agreement between the former. If no agreement can be reached, the Judge shall close the proceedings and issue the proper decree, according to the proofs, either prohibiting the agricultural loan, or authorizing it if it appears from the report of the experts that, after the works have been made, the rights of the persons opposing them shall be no less protected than they actually are, because of the lowering of the income of the estate or its selling price.

ART. 110. To distinguish defects capable of correction from those which are not, and to enter or not a cautionary notice by virtue thereof, according to the provisions contained in Articles 65 and 66 of the law, the Register shall consider the validity of the obligation entered into by the instrument. If this should be null because of its character, conditions, the capacity of the parties thereto, or other similar reason, independent of its extrinsic form, the defect shall be considered as not capable of correction. If the obligation is a valid one, taking into consideration the circumstances mentioned, and the defect is only in the external form of the document containing it, which can be amended or re-executed at the will of the persons interested in the record, the defect shall be considered capable of correction.

ART. 111. In the cases of Article 19 of the law the interested persons may reclaim the document and correct the defect within the thirty days during which the effects of the entry of presentation continue, and request the entry of a cautionary notice, which shall continue in force during the time fixed by Article 96 of the law, or bring

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administrative proceedings against the Register. When the Treasury is interested it shall be represented by the Public Prosecutor in the absence of the State Attorneys.

ART. 112. The administrative remedy referred to in the preceding article shall lie in all cases in which the Register suspends or refuses a record or entry, for any reason whatsoever. The interested persons shall apply to the Judge of First Instance of the subdistrict, who shall render a decision after hearing the Register. From this decision an appeal may be taken to the President of the Audiencia within the period of eight days, computed from the date of the notice, and, as a last resort and within the same period, to the Registry and Notarial Division of the Colonial Department.

ART. 113. If the object of the proceedings should be to demand the record, they may only be instituted by the persons interested therein or by their legitimate representatives, and in no case by the Notaries who certified to the respective instruments, by virtue of this simple and exclusive act.

When the interested persons appeal, because the record was suspended on account of defects in the manner of executing or drawing the document subject to record, the Notary who certified to it shall be given a hearing, in addition to the Register.

ART. 114. Without prejudice to the interested persons requesting the record, should they desire to do so, the Notaries, in case of the suspension or refusal of a record on account of defects in the instrument, may, subject to the established procedure, institute the proper administrative proceedings, which must be limited to a request for a declaration that the document is executed in accordance with legal formalities and prescriptions. A definite declaration that the document is correctly executed shall be equivalent to ordering its record, in view of which the interested person, without any further proceedings, shall obtain the entry in a proper case.

ART. 115. Registers, Notaries, and interested persons may appeal to the Division from the decisions rendered in administrative appeals by the President of the proper Audiencia.

The period in which all appeals must be taken shall be eight days, computed from the date of the notice of said decisions.

ART. 116. Independently of the administrative remedy mentioned in the preceding article, the interested parties may institute proceedings before the Courts to investigate and contend among themselves the validity and consequent record of the instruments, as well as to the nullity or validity of the obligation therein contained.

The Register, against whom no judicial action can be brought, shall not take part in the suit instituted for this purpose by the interested parties, in accordance with the provisions of the law, except when a formal action is brought against him personally, to exact the civil or criminal responsibility to which his actions may have given rise.

ART. 117. Administrative remedies instituted by the interested persons against the determination of the instrument made by Registers, or against the refusal of the latter to record or enter any document in the Registry, shall be officially instituted and no fees charged therefor. In the same manner any administrative proceedings brought by Notaries, the object of which is to procure a declaration that the document which has not been recorded on account of defects therein,

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has been executed in accordance with legal prescriptions and formalities, shall also be proceeded with officially and without charges, no matter what the decision in the case may be.

ART. 118. When Registers, in accordance with the provisions contained in the last paragraph of Article 19 of the law, suspend or refuse a record, notice, or cancellation of documents issued by a judicial authority, on account of defects therein, or on account of some legal obstacle which appears in the Registry, they shall return said documents to the Court or Judge who authorized them, with the proper communication, in which they shall state the legal provisions on which their suspension or refusal of the record is based.

ART. 119. The communication of the Register, with the document accompanying it, shall be annexed to the decrees which gave rise thereto. If the defect is capable of correction, and the Judge or Court consider the opposition of the Register well founded, they shall issue the orders necessary to remove the obstacle preventing the proper definite record from being made. Should they not consider it well founded, or that the defect is incapable of correction, they shall refer them to the parties within three days, and if minors, incapacitated persons, or the State are interested in the record requested, or when the object thereof is to secure the expenses in a criminal trial, they shall also refer them within the same period to the Department of Public Prosecution.

ART. 120. The administrative remedy against the suspension or refusal of Registers to record or enter in the Registry a document issued by judicial authority, must be brought before the President of the Audiencia within whose jurisdiction the Registry is located. The Department of Public Prosecution must necessarily, in the cases mentioned in the preceding article, institute the proper administrative remedy, which shall be brought by the prosecuting attorney of the Court or Tribunal which may have issued the document, with the proper petition, to the President of the Audiencia, sent through the Prosecuting Attorney of said Audiencia.

ART. 121. The President, after hearing the Judge or Court which issued the document, and also hearing the Register, shall issue the proper decree, which, besides being communicated to these officials, shall be forwarded to the plaintiff.

ART. 122. From the decision of the President the Judges, Courts, Registers, or plaintiffs may appeal to the Registry and Notarial Division of the Colonial Department, within the period fixed for other administrative appeals.

ART. 123. Registers must complain to the President of the proper Audiencia with regard to any compulsion on the part of Judges or Courts, who, in taking cognizance of any civil or criminal question, force them to record or enter in the Registry any document, or to make any entry in the books which said officials consider improper. The President, in view of the complaint of the Register, shall request a report of the Judge or Court who gave ground for it. After the report has been concluded he shall hear the Prosecuting Attorney and shall render the proper decision, observing the other proceedings mentioned in the two preceding articles.

The Judge or Court of whom the President has requested a report, shall stay all proceedings against the Register until the final decision of the appeal, which he shall order complied with and executed.

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ART. 124. Administrative proceedings brought by the Department of Public Prosecution concerning the determination as to the legality of a document made by Registers and complaints mentioned in the preceding article shall be officially instituted and without any fees being collected.

ART. 125. Final decisions rendered by the Registry and Notarial Division of the Colonial Department shall be published in the "Gaceta de Madrid," and in that of the proper island.

ART. 126. Cautionary notices shall contain, according to the cases, the following details:

First. A description of the estate which is the subject of the entry in the Registry, or encumbered by the right which is to be recorded, in the manner prescribed for records, to be taken either from the document presented for the entry, or from any previous record of the estate or right; but stating in the latter case the bounds, location, number, area, or other special and important circumstances of the realty, if they are not contained in the document.

Second. A statement of the liens on the estate, which, if they are recorded, shall be shown by a mere reference to the number, folio, and book containing them, and should they not be recorded, those which appear in the instrument presented shall be mentioned.

Third. The name and surname of the owner of the estate or right of which the entry treats, his status (whether married or single), age, place of residence and profession, as well as his title, should they appear.

Fourth. If an entry is requested after the owner of an estate or right of which it treats has died, and before it has been recorded in the name of his successor to said estate or right, the date of the death shall be stated, and also that of the will, should there be any, the name of the Notary before whom it was executed, and that of the heir, or otherwise, a statement that judicial proceedings have been instituted for the declaration of heirship; and should the declaration have been made, the names, surnames, and residence of the heirs, and date of the decree by which they were so declared.

Fifth. If an entry of a suit for ownership is demanded, the date of the order permitting the action shall be stated, the object of the same, and the names of the plaintiff and defendant.

Sixth. If it should be made by virtue of a writ of attachment or of sequestration, or in fulfillment of some decree, it shall so be stated, the value of what it is desired to secure being mentioned, and the names of the persons in whose favor the decree was issued, and of the person against whom it was rendered.

Seventh. If it should be made by virtue of a decree declaring a person in bankruptcy or insolvent, or temporarily prohibiting the alienation of certain property, the basis and object of said decree shall be stated, and the name of the person who obtained it.

Eighth. If it should be made by virtue of a request to declare the civil incapacity of some person, the classification given to said person shall be stated, the kind of incapacity, a declaration of which is requested, the date of the writ of admission of the claim, and the name of the plaintiff.

Ninth. Should the entry be one of a legacy, its class shall be determined, as well as its value and conditions, and that the inheritance has been accepted by the heir without recourse to testamentary pro-

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ceedings, that no partition of property has taken place, whether the one hundred and eighty days allowed by law to make the presentation of the request for the entry have elapsed or not, and whether the entry is made either by virtue of a judicial decree or by mutual understanding between the legatee and the heir.

Tenth. If the entry refers to some agricultural credit, the kind of works which it is intended to construct shall be briefly stated, the contract made for this purpose and its conditions, a statement that the estate has no encumbrances, or, should it have any, the value at which the estate has been appraised in its actual condition, with a citation of the persons interested in said liens, and if this was done by a public instrument and on what date, or by virtue of judicial proceedings, with a statement of the judgment rendered in the same.

Eleventh. A statement of the creation of the cautionary notice in the name of the person who has obtained it.

Twelfth. A statement of the document by virtue of which the entry was made, its date, and, if it is a judicial mandate, the name and place of residence of the Judge or Court which issued it, that of the Secretary or Clerk certifying it, and the number under which one of the duplicates of the mandate has been filed in the Registry.

Thirteenth. If the instrument is private, the Register shall also state that the parties appeared before him personally or through an attorney, certifying that he knows them, and that the signatures at the foot of the petition presented to him are authentic; and should the Register not be acquainted with the interested parties or their attorneys, the petition requesting the entry shall be signed, together with said persons, by two witnesses, who shall take part in the proceedings and certify as to the correctness of the signatures of the parties.

Fourteenth. A statement of the date, book, folio, and number of the entry of presentation of the document in the Registry.

Fifteenth. That the entry conforms with the documents to which it refers; date, signature, and fees.

ART. 127. If a marginal note has been requested which is not a necessary consequence of a record or entry, and it can not be made on account of some defect in the instrument, a cautionary marginal note shall be made, if it should be requested, stating what it is desired to prove by the document presented, and the reason for the suspension, in the following manner:

The ——— pesos deferred payment of the price for which A bought of B the house of this number, as appears from the adjoining record, appear to have been paid according to a receipt signed by A in favor of B on the —— day of ———, before Notary C———, the original copy of which has been presented in this Registry on the —— day of ———, at —— o'clock, in accordance with entry of presentation number ——, folio ——, of liber ——, of the Day Book.

But as said copy has the defect of ——— I suspend the entry of the record of payment and return the instrument so that the parties may correct the error, if they can do so, within the legal period, making this cautionary note in the meantime at the verbal request of A. (Date, surname, and fees.)

ART. 128. If a record of cancellation is requested, and it can not be made on account of some defect capable of correction, a record analogous to that of the cancellation requested shall be made, stating what record appears to be canceled; the names of the persons in whose favor the record is made, and of the persons interested in having the cancellation thereof made; the manner in which the right may have been extinguished, the date of the document, the official who certified to it,

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its presentation, the defect which it contains, the period within which to correct it; that the entry is made at the verbal request of the interested person; date, signature, and fees.

ART. 129. All cautionary notices made on account of the suspension of the requested records shall be made in the same manner as the said records, with the following changes only:

First. Instead of a record, it shall be stated that it is a cautionary notice.

Second. After stating the conformity of the entry with the documents to which it refers, there shall be added:

Having noticed the defect of ——— or the defects (stating all defects which may be noted), I suspend the record requested and I return the instrument so that within the period of ——— the parties may correct the defects mentioned, should they be able to do so, making this cautionary notice in the meantime at the verbal request of the person interested. (Date, signature, and fees.)

ART. 130. When a cautionary notice is ordered to be made by a mandate, and it can not be effected for some good reason, it shall be made in the same manner as the decreed notice would have been, with the only difference that, instead of making the entry, a statement shall be entered to the effect that the entry of the notice has been ordered. After the conformity has been stated, mention shall be made of the defect found, that the notice ordered is suspended, and that an entry of suspension is made.

To permit the entries of suspension to be made, the verbal request of any interested person shall not be necessary when the question is of attachments for criminal causes, or when the State is interested therein.

TITLE IV.—CANCELLATION OF THE RECORD AND ENTRY OF CAUTIONARY NOTICES.

ART. 131. Realty which is the subject of a record shall be considered as extinguished for the intents and purposes of No. 1 of Article 79 of the law, if it disappears completely on account of natural accident, ordinary or extraordinary, such as the force of rivers, change of their beds, ruin of the buildings erected on ground belonging to another person, or other similar events.

ART. 132. A recorded property right shall be considered as extinguished for the intents and purposes of No. 2 of said Article 79:

First. When the recorded property right in realty no longer exists, either on account of the renunciation of the person in whose favor it stands, or by mutual agreement between the interested persons, as would happen if the owner of a dominant estate renounce his servitude, or a creditor his mortgage, or if a grantee of an annuity (censo) should agree with the grantor of an annuity (censo) to free one estate from the annuity (censo) to place it on another.

Second. Also when some recorded property right ceases to exist either by operation of law, as in the case of a legal mortgage when the reason therefor ceases, or by the natural operation of a contract which gave rise to the record, as in the case of a mortgage when the mortgagor pays his debt, in annuities (censos) when the person paying them redeems the same, in leases when their term has expired, and in other analogous cases.

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Third. When the judicial sale of an estate has taken place, and the first mortgage having been paid from the proceeds, no balance remains to be applied to the payment of subsequently recorded creditors, in accordance with the provisions contained in Article 125 of the law.

ART. 133. Cancellations which are made because some instruments have been declared null, shall be effective without prejudice to the provisions contained in Article 34 of the law.

ART. 134. The realty which is the object of the record shall be understood as reduced for the intents and purposes of No. 1 of Article 80 of the law, whenever its extension or proportions are actually diminished, either naturally, such as by the accidents mentioned in Article 131, or by the will of the owner, as when the latter divides his estate, alienating a part thereof.

ART. 135. The recorded right of the owner of the encumbered estate shall be considered diminished for the intents and purposes of No. 2 of said Article 80:

First. When the amount of said right is diminished by the renunciation of the interested person, or by agreement between the parties, as when the mortgagee consents to reduce his mortgage to a part of the mortgaged realty, or if the beneficiary renounces a part of the estate subject to a use, or if the grantee of the annuity (censo) limits the annuity (censo) to a part of the estate encumbered thereby.

Second. When the amount of the right recorded is diminished by the natural operation of the contract which is the subject of the record, as happens when the mortgagor pays a part of his debt, making it appear in due form, or when the person paying the annuity (censo) redeems a part of the principal thereof, or when, in a use for life created for two or more lives, one of the beneficiaries dies.

Third. When the amount of the right is diminished by virtue of a judicial decree, as happens whenever a specific part of the instrument, by virtue of which the record was made, is nullified.

ART. 136. The same instrument by virtue of which the record of an obligation was made shall be a sufficient document to cancel it, if it appears therefrom, or from any other document which is prima facie evidence, that said obligation has ceased to exist or has been extinguished.

A new instrument for a cancellation shall only be necessary, in accordance with the first paragraph of Article 82 of the law, when, the obligation having been extinguished by the will of the interested persons, this circumstance must be proved to permit of the cancellation of the record.

ART. 137. By virtue of the provisions contained in the second paragraph of Article 82 of the law, cancellation of records, the existence of which are not subject to the will of the persons interested therein, shall be made in accordance with the following rules:

First. The record of a mortgage on a right of use shall be canceled at the instance of the owner of the real estate, by the simple presentation of the document, which is prima facie evidence of the termination of said use by an act against the will of the beneficiary.

Second. When, by virtue of the preference mentioned in No. 4 of Article 107 of the law, in favor of the first mortgage creditor, the encumbered estate or right is judicially alienated, the records of debts in favor of second or subsequent creditors shall be canceled at the instance of the person who becomes the owner of the encumbered

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realty or right, by the simple presentation of a mandate ordering the cancellation, which should contain a statement that the selling price was not sufficient to cover the debt of the first, or that the balance, should there have been any, was used for the benefit of subsequent creditors.

Third. Records of mortgages created on works, the operation of which is granted by the Government, and to which reference is made in number 6 of Article 107 above mentioned, shall be canceled, if the right of the owner of the concession is declared extinguished, by virtue of the same instrument from which the fact appears, and of the document which shows that the amount of the indemnity which the owner of the concession is to receive, in a proper case, to apply to the payment of recorded mortgages, is stated in due form.

Fourth. The record of submortgages treated of in number 8 of Article 107 of the law, created without the formalities established by Article 152 of said law for the assignment of mortgage credits, and those of this class embraced in Article 154, may be canceled by virtue of the instrument fixing the right of the submortgagor or assignor.

Fifth. Records of mortgages created on property in litigation, mentioned in number 10 of said Article 107, may be canceled with regard to the whole or a part of the estate or right by the mere presentation of the decree issued, if the mortgagor has lost the suit.

Sixth. Records of sales of property subject to conditions subsequent, or involving rescission, and records of the creation of property rights to the same property, may be canceled if the reason for the rescission or nullity is recorded, by the presentation of the document proving that the former has been rescinded or annulled and that the value of the property or the amount of the installments which must be returned with any proper deductions have been deposited in the Public Depository (Caja de Depósitos) or in any other similar public institution established for this purpose.

The provisions contained in this article are to be understood without prejudice to the privilege of the interested persons to bring any proceedings before the Courts, which they may consider of assistance to them.

Art. 138. In order that the purchasers of public lands, after all the payments thereon have been liquidated, may cancel the mortgages created on the estates, to secure the purchase price, they shall request a certificate of their total solvency from the proper office of the Interior Department, showing the receipts and bills of sale for this purpose.

After the receipts have been compared with the proper books, a certificate shall immediately be issued describing the estates and stating that all payments have been made, together with the day on which each one was paid into the Treasury.

In the certificate mentioned there shall also be clearly and definitely stated that, in the name of the State, the proper Chief of the Interior Department consents to the cancellation of the mortgage which existed on the estate until its entire solvency from the responsibilities contracted by the purchaser.

The certificate shall be delivered to the purchaser without delay, the receipts and the instruments being returned to him at once, after a memorandum has been made on the latter stating that the certificate had been issued, and also its contents.

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ART. 139. Registers shall not cancel any record of a legal mortgage made by a mandate of a Judge or Court, except by virtue of another mandate.

Judges or Courts shall not order said cancellations until the extinction of the responsibility secured by the mortgage has been proven to them, or the fulfillment of the formalities which may be necessary in accordance with the law, according to the cases, to alienate, encumber, or release mortgaged realty.

If a legal mortgage has been recorded without a judicial mandate, the Register shall not cancel or make any other entry by virtue of which it would be legally canceled, unless the public instrument presented for this purpose shows that the formalities mentioned in the preceding paragraph have been complied with.

ART. 140. Cancellations of cautionary notices shall be proper:

First. When, by virtue of a final decree, against which no appeal in cassation has been brought, the defendant is released from the claim to ownership, which had been entered in accordance with the first paragraph of Article 42 of the law.

Second. When the plaintiff abandons the suit or withdraws therefrom by presenting to the Register a decree showing that either of these steps has been taken.

Third. When in the summary action for possession, or criminal or compulsory proceeding, the attachment is ordered to be set aside, or the estate entered is conveyed or awarded in payment.

Fourth. When the sequestration, or the prohibition to convey, is ordered raised.

Fifth. When the action brought for the purpose of obtaining any of the decrees mentioned in number 4 of Article 2 of the law, has been finally refused.

Sixth. When a declaration of insolvency or bankruptcy is refused or rendered ineffective.

Seventh. With regard to the use by virtue of widowhood, when the widowed spouse makes the right effective in any of the forms established by Article 838 of the Civil Code.

Eighth. When a legatee collects his legacy.

Ninth. When an agricultural creditor has been paid.

Tenth. When a notice is converted into a definite record in favor of the same person in whose name it had been created, or his legal attorney.

Eleventh. When the notice becomes ineffective by virtue of the expiration of the period mentioned in Articles 86, 92, and 96 of the law.

Twelfth. When the person in whose favor the entry has been created renounces his right, should he have the legal capacity to do so.

ART. 141. The renunciation treated of in the last paragraph of the preceding article shall be made by virtue of a public instrument, if the obligation recorded or entered which it is desired to cancel has been created in a similar manner. If the record or entry has been created by virtue of a judicial decree, the renunciation must be made by a petition in writing, addressed to, and ratified before the same Judge or Court which issued the decree.

If it is desired to cancel a cautionary notice created by virtue of a petition addressed to the Register by the persons interested or by their legal representatives, it shall be sufficient that they present another to

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him, setting forth their renunciation, and requesting the cancellation. In such cases the Register shall require that the renunciation be ratified in his presence, and shall assure himself as to the identity of the person and as to his capacity to exercise the right in question.

ART. 142. A cautionary notice may be converted into a record when the person in whose favor it has been created definitely acquires the right entered.

This conversion shall take place by means of a record referring to the entry itself, stating:

First. The date, folio, and letter of the cautionary notice.

Second. Its reason and object.

Third. The manner in which the right entered was acquired and the name of the person in whose name the entry was made.

Fourth. The details necessary for records, prescribed by numbers 3, 6, 7, and 8 of Article 9 of the law.

ART. 143. When a third person acquires the right entered in such manner that the latter is thereby legally extinguished, the record must be made in the name of the grantee, if it is proper, in the same manner as other entries, but stating the reason therein, and also that the cautionary notice is thereby canceled.

After the cancellation has been made, it shall be so stated by a note in the margin of the canceled entry.

ART. 144. If after an estate has been alienated, or an annuity (censo) has been redeemed, and the corresponding instrument executed, the sale or redemption is rescinded or annulled by an administrative decision, the public administration shall be requested to demand that a cautionary notice of this decision be made, presenting a certificate thereof in duplicate, which must also state the conditions necessary for an entry, according to Article 72 of the law.

If the period has elapsed within which, according to the provisions in force, the person interested may bring an action against these decisions by means of administrative actions, without his doing so, the Director of the branch having jurisdiction of the estate or right, shall procure the record of ownership in favor of the State or of the corporation to which it belongs, if it is to remain for amortization; and the cancellation of the record of the annulled contract only when said estate or right is to be alienated in accordance with law.

A legacy shall be considered as demandable, for the intents and purposes of number 7 of Article 42 of the law, when its immediate payment or delivery can be legally sued for, either because the time has elapsed, or the conditions to which it was subject have been complied with, or because there exists no legal obstacle preventing or delaying said payment or delivery.

Legacies consisting of annuities (censos) or periodical incomes, shall be considered as demandable from the time an action can be brought for the collection of the first annuity (censo) or income.

ART. 146. The mortgage treated of in Articles 88, 89, and 90 of the law, must be created by the proper partition against the person to whom the realty encumbered by the annuity has been awarded, and in default thereof, in the public instrument executed by the grantee of the annuity and the encumbered legatee or heir; or, should the latter not come to an agreement as to the manner of creating said obligation, by virtue of a decree.

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When a testamentary action has been brought, this question shall be proceeded with and decided as an interlocutory matter. When such action has not been instituted, the question shall be decided in a declaratory suit.

ART. 147. Registers shall officially cancel entries made on account of the suspension of judicial mandates as soon as they become extinct, because the time fixed in Article 96 of the law for the duration of these entries has elapsed.

For the extension of the time of the entry in the case mentioned in Article 96 of the law, the interested person shall present a petition to the Judge or Court, stating the reason why he was not able to correct the defect which caused the suspension of the record, and accompanying thereto the written proofs justifying his right. The Judge or Court shall give a copy of the petition to the other interested person, and, if the latter should not agree to it, he shall hold an oral trial in accordance with the provisions prescribed in Article 57 of the law.

If the Judge or Court consider the defect as capable of correction, and the reason adduced by the plaintiff be duly proved, he shall order such extension; otherwise refusing it.

The extension shall be entered in the Registry by means of a new notice. In order that it may be effective, it is necessary that the mandate ordering it be presented in the Registry before the first period of sixty days has elapsed.

ART. 148. The provisions contained in Article 77, regarding the determination made by Registers as to the legality of instruments, by virtue of which the records are demanded, shall also be applicable to the determination made by them in instruments by virtue of which cancellations are to be made, in accordance with the provisions contained in Article 100 of the law.

ART. 149. When a Register suspends the cancellation of a record or of an entry, either because he has determined the document presented for this purpose as insufficient, or because he is in doubt as to the competency of the Judge or Court which has ordered it, in accordance with the provisions contained in Articles 100 and 101 of the law, he shall enter this circumstance by means of a cautionary notice, if it is requested, in which shall be stated the record or cancellation requested, the document presented for this purpose, its date, the date of its presentation, and the reason for the suspension.

ART. 150. The notice mentioned in the preceding Article shall be officially canceled by the Register:

First. In the case of Article 100 of the law, sixty days after its date, if the defect contained in the document which caused the entry of the notice has not been corrected before then.

Second. In the case of Article 101 of the same law, when the incompetency of the Judge or Court ordering the cancellation is declared by final judgment, if within the thirty days following the date of said declaration no decree from a competent Judge or Court is presented in the Registry, by which said cancellation is ordered.

ART. 151. Whenever the suspended cancellation is made before the cancellation of the entry of suspension, the cancellation shall be effective from the date of said suspension.

The cancellation in the latter case shall make special reference to the entry mentioned.

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ART. 152. When a Register suspends a cancellation because he is in doubt as to the competency of the Judge or Court which ordered it, he shall give notice thereof in writing to the person interested, so that, should he desire to do so, he may appear before the President of the Audiencia within the period of ten days, presenting the document by virtue of which said cancellation has been requested.

ART. 153. Should the President deem any other data from the Register necessary to make a decision, he shall request it of said Register, and shall decide what is proper without further proceedings.

The decision rendered shall be communicated to the Register by means of the proper order, and the person interested shall be notified in the usual manner.

ART. 154. When the interested persons or the Judges appeal to the Audiencia from the decision of the President, the Government Division thereof shall take cognizance of the question, hearing the plaintiff in writing once only, after receiving a report from the Register, and requesting that the documents it may consider necessary, be furnished.

ART. 155. When the cancellation is a partial one, it shall clearly indicate the part of the right extinguished, the part of the estate remaining, as well as the reason for its reduction.

ART. 156. When an entry is canceled, so that the right entered may be merged in the ownership of the person who had previously recorded it in his favor in an unencumbered condition, a statement of this fact shall be made in the cancellation.

ART. 157. The cancellation shall be entered in the proper book and place, according to its date, and shall state:

First. The number of the record canceled.

Second. The document by virtue of which the cancellation was made, stating, if it is an instrument, the names of the parties thereto, that of the Notary before whom it was executed, and its date; if it is a written petition, the names of the signers, the date, the fact that said signatures have been ratified in the presence of the Register, a clause stating that said persons are personally known, and that, according to the Registry, none of them has lost the right accorded him by the canceled record; if it is a judicial decree, the name of the Judge or Court which issued it, its date, and the name of the Secretary who certified it.

Third. The day and hour of the presentation of the instrument, petition, mandate, or judicial order by virtue of which the cancellation is made in the Registry, with a reference to the proper entry of presentation.

Fourth. A statement to the effect that the document presented has been filed in the proper package.

Fifth. The date of the cancellation.

Sixth. The signature of the Register.

When an instrument of cancellation is to be recorded in several Registries, the original shall be presented in all of them, and at the foot thereof the Registers, in their proper order, shall make the necessary memorandum.

The interested person, in presenting the instrument to each Registry, shall accompany thereto an ordinary copy of the same, executed

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on common paper, which shall be compared by the Register, and if it is a true copy, he shall state at the foot thereof, *In conformity with the original presented*, then the date, and under the latter the person presenting the document shall sign, or a witness, if the latter should not be able to do so, said copy being filed.

ART. 158. Of all cancellations made, the Register shall make a note at the margin of the record or entry canceled, worded in the following manner:

The adjoining record (or entry) is canceled, number ——, in volume ——— of this Registry, folio ———, entry number ——. (Date and surname of the Register.)

ART. 159. Whenever there is litigation concerning the inefficiency of some cancellation, the provisions regarding records mentioned in Articles 88 and 89 of these regulations shall be observed.

A note of the suit brought concerning the inefficiency shall be placed in the margin of the cancellation involved and in that of the other entries in which reference to said cancellation was made.

TITLE V.—MORTGAGES.

SECTION ONE.—*Mortgages in general.*

ART. 160. Recorded mortgages shall be strictly charges on realty, the mortgage debts being collectible no matter what subsequent interest has been acquired on the same mortgaged property.

ART. 161. As, according to number 5 of Article 111 of the law, there are considered as mortgaged the indemnities allowed or due the owner of the mortgaged property for the insurance of the latter or of the crops, or on account of the condemnation of the lands or buildings, woodlands or other things situated on the same, if said indemnities are paid before the mortgage falls due, their amount shall be deposited in the manner agreed to between the persons interested; and should they not come to an agreement, in the public institution designated by the Judge or Court, until the obligation is canceled.

ART. 162. The owner of the accessions and improvements which are not considered mortgaged, according to the first paragraph of Article 112 of the law, who chooses to collect the amount, according to Article 113, in case the estate is alienated, shall be paid in full from the proceeds of the sale thereof, even though the balance is not sufficient to pay the mortgage debt. But if the accessions or improvements may be separated without damage to the estate, and the owner choose, however, not to take them away, they shall be alienated apart from the estate, and only the price thereof shall be turned over to said owner.

ART. 163. In the case of a sale mentioned in the second paragraph of Article 112 of the law, the instrument executed for this purpose shall state as precisely as possible that the part of the land sold does not contain any machine, chattel, object, or construction of any kind whatsoever, also briefly mentioning the prior encumbrances on the estate and on said part of the land. In the proper record in the Registry of the new estate formed by this part of the land, express mention shall be made of these statements in the instruments, the Register refusing said record if it appears from a prior one that the statements made are incorrect.

The error shall not be capable of correction if, according to the information contained in the Registry, the land sold contains any of

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the additions mentioned in the second paragraph of Article 112 of the law.

The record of the sale shall be communicated to prior mortgagees, in the manner prescribed in Article 167 of these Regulations, so that within the period of thirty days, which can not be extended, they may question the correctness of the facts recited in the proper action.

ART. 164. Registers shall not record any mortgage on various properties subject to the same obligations, unless by agreement between the parties, or by virtue of a judicial decree, in a proper case, the amount is previously fixed for which each estate is to be liable.

The parties may agree to the distribution mentioned in the preceding article, in the same instrument which should be recorded, or in any other public instrument or petition directed to the Register, and signed or ratified before him, by the interested persons.

The record in these cases shall be made in the manner prescribed by article 252 of these regulations.

ART. 165. The provisions contained in the preceding article shall not be applicable to cautionary notices except when they are converted into definite mortgage records and encumber various properties.

The cautionary notice of various estates shall be entered in the special Registry for each estate, stating also the amount of the debt or obligation for which said estate is liable.

ART. 166. When the mortgaged estate deteriorates, the value diminishing through the imposition, fault, or will of the owner, the mortgagee may request the Judge of the subdistrict in which said estate is situated to admit the proofs of these facts; and if their correctness is proven; and the fear that the mortgage is insufficient shall appear well founded, a decree shall be issued ordering the owner to do or not to do what shall appear necessary in order to avoid or remedy the damage.

If afterwards the owner should insist in abusing his right, the Judge shall issue another decree placing the property under judicial administration.

ART. 167. Whenever Registers, in compliance with the provisions contained in Article 125 of the law, cancel any debts subsequent to the first, because the sale or award of the property in payment of the debt has taken place, he shall communicate the fact of the cancellation and the reasons therefor to the persons who may have the other recorded debts in their favor, so that they may make use of the rights against the debtor, mentioned in the last paragraph of Article 125 of the law.

Said notice shall be made by means of an official document (cedula), charging therefor the fees contained in the judicial schedule of fees for Clerks of Courts of First Instance in the preparation of administrative documents, if the owners of the debts or their legal representatives reside within the jurisdiction of the Registry.

Should they reside outside of said jurisdiction, or should their residence be unknown, the proper announcement of the notice shall be posted in the Registry, said notice being considered served after sixty days have elapsed.

ART. 168. If a mortgage debt or its interest has fallen due, in whole or in part, the proceedings for its collection, in so far as they are directed against the property encumbered by the mortgage only, shall be subject to the provisions contained in Article 128 of the law and the

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following articles and those of these regulations, complemented in the manner prescribed therein by the law of Civil Procedure for Cuba, Puerto Rico, and the Philippines, respectively.

ART. 169. The following must be presented with the first document drawn in the proceedings:

First. The proofs of the identity of the person, including those which show the appointment of the solicitor (procurador), when the creditor himself personally, or his legal representative, does not take part therein.

Second. The instrument or instruments of the credit, with a memorandum of their record, and with the formalities required by the law of Civil Procedure for authorizing a writ of execution.

Third. A certificate of the Register of property, of a date subsequent to that on which the obligation fell due, declaring that the mortgage does not appear canceled, nor that its cancellation is imminent according to the Day Book. This certificate should also contain a literal copy of the records of any other annuities (censos), mortgages, and other incumbrances affecting the mortgaged estates as well as of the transfer of said estates to third persons.

This certificate can not date back more than fifteen days before the institution of the proceedings.

The document referred to in this article, which shall be always authorized by the signature of a lawyer, shall detail the facts and legal reasons, showing that the debt was incurred and exists, and that it is recoverable, and also the competency of the Court; it shall expressly state the exact amounts collected by way of interest, or on account of the principal of the debt, stating also the net amount of the claim, which, by the mere act of instituting the proceedings, the creditor will contract, making himself liable to indemnify any loss or damage caused the debtor or third persons interested therein, by malice or negligence in the true statement of facts and of the circumstances, which the Judge has to take into consideration to authorize the proceedings and to continue them.

ART. 170. The Judge shall examine the petition and the documents upon which it is based, and should he consider the legal requisites complied with, he shall issue a decree without further proceedings, summoning the persons who, according to the certificate of the Register, are in possession of the mortgaged property, whether it is in the hands of the debtor, or whether it has been transferred to a third person in whole or in part, so that within thirty days they may make the payment of the sum sued for, with costs, should the latter be also guaranteed by the mortgage; otherwise there shall be a public sale of the mortgaged property.

Should the Judge consider that said requisites have not been complied with, he shall also refuse the demand requested by means of a decree, which in this case shall be appealable for review and also to stay proceedings.

The Judge of competent jurisdiction shall be the Judge of the place in which all the property mortgaged is situated, no change of venue being admissible. When the mortgaged property is located within different judicial districts, the Judge of competent jurisdiction shall be the one to whom the matter shall be expressly submitted, as provided by the instrument, and in default of said provision the Judge of the place in which the realty having the greatest value is located, or

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any of the estates of the greatest value, should two or more have an equal value according to the instrument. If the latter has been recorded before the law went into operation, and it does not state the value of the estates, the amount of the mortgage obligation distributed among them shall be taken into consideration.

ART. 171. When all the mortgaged property is in the hands of one owner only, according to the certificate of the Register, the formal demand for payment shall be served on the owner at his domicile, should he live in the municipal district where any of said property is situated. The same procedure shall be observed with regard to each owner of different properties, should there be several. If any of those on whom the demand for payment is to be served does not reside within the municipal district where some of the property is located, the demand shall be served on the person in charge of the estate in any legal capacity, so that he may communicate it to the owner without delay. If the estate should be abandoned, so that nobody is in charge thereof, the demand shall be served on the administrative municipal official of the town, with the same request that it be communicated to the owner.

When the ownership of some mortgaged realty is divided, because the title or direct ownership is vested in one person and the use or some interest in the estate in another, for the purpose of the demand, the person in charge of the estate or the person who represents him shall be considered the owner in the name of all.

If any person from whom payment is to be demanded figures in the certificate of the Register as owner of several mortgaged estates, and the demand is to be served on the person in charge, or on the municipal authority, the estate which, among those possessed by the same person, appears to have the highest value according to the petition shall be taken into consideration, or any of those which, being equal in value, exceed the value of the rest. In default of any valuation the amount of the mortgage obligation shall be taken into consideration.

When the formal demand for payment is not served at the domicile of the person from whom payment is due, nor served on his attorney in fact, or on the lessee who has charge of the estate, it shall also be made public by means of edicts which shall be published in the "Gaceta" of the proper island, and in such cases the period of thirty days shall be computed from the date of publication in said official newspaper.

If the domiciles of the persons interested in the obligations which have been recorded subsequently to the interest of the claimant appear in the certificate of the Register of Property, the Judge shall order, at the time of the formal demand for payment, that the notice thereof be served on said interested persons at their domiciles, if they are to be found there.

ART. 172. After the period of the demand for payment has expired and the debtor has not paid the sum or presented a public instrument of cancellation with the note of presentation, in any of the Registries where cognizance thereof is to be taken, or a certificate of the Register stating that the mortgage in question has been cancelled, the Judge shall order, at the instance of the plaintiff, that the mortgaged property be sold at public auction within the period of twenty days, notices being posted in the usual places of the town where the proceedings are being held and of the place within whose jurisdiction the

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property is situated, and publishing them in the "Gaceta" of the island, setting forth the titles, in so far as they are contained in the documents accompanying the first petition. The decrees and other instruments that the plaintiff may have considered advisable to bring, shall be exhibited in the office. It shall be understood that all bidders accept the sufficiency of the title.

These notices shall fix the day, hour, and place of the auction, and shall also serve to notify creditors thereof who had their interests in the property recorded or entered subsequently to those of the claimant, and against whom the notice prescribed by the last paragraph of Article 171 is ineffective, it being necessary for this purpose to state the names of said persons interested as they appear in the certificate of the Register, so that they may be present at the auction, should they so desire.

When the estimate of the property agreed to in the instrument constituting the loan, by virtue of which the proceedings are held, exceeds the amount of the preferred obligations secured by the property, said estates shall be inserted in the notices as the amount acceptable at the public sale. When the preferred obligations exceed it, their total amount shall be the minimum sum acceptable at the public sale.

To fix the amount of the preferred obligations, the Judge shall capitalize the amount of the annuities (censos) and other perpetual liens which are preferred, and which shall be charged to the purchaser and deducted from the price, this fact being stated in the notices.

Among the obligations the payment of which is treated of in the preceding paragraph, shall be included, at the instance of the claimant, the obligations guaranteed by a legal mortgage to the Public Treasury, or to the insurers, and the amounts expended by the claimant himself to extinguish said obligations.

The public sale shall take place in the manner prescribed for summary actions for possession; but when two-thirds of the figures fixed in the notices do not exceed the amount of the preferred obligations, this amount shall be the minimum admissible for the bids.

Should there be no bidder at this first auction, the claimant may request that the property be awarded him for the lowest figure which could have been admitted by the auctioneer, according to the preceding paragraph, assuming all prior incumbrances, and being obliged to assign any surplus there may be, after his debt has been paid. This surplus shall be delivered to the proper persons, the judge depositing it subject to the order of said person, in the public institution designated for this purpose, should it not be delivered within ten days following the assignment.

Should the claimant not demand the award, he may request that the mortgaged property be again offered at public sale, reducing the figure acceptable at the first one by 25 per cent, provided this reduction protects prior debts. For this purpose the claimant must present a new certificate from the Register, stating that his mortgage has not been canceled, if the proceedings have been suspended for more than six months. This public sale shall take place in the same manner as the first one, bids amounting to two-thirds of the reduced price being admissible, provided they would pay the claims preferred to those of the claimant. The latter may also request the award, under the con-

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ditions stated, if the second auction is totally or partially without result.

If the second auction does not effect the award or sale, others may be held at the instance of the claimant for an amount not less than the preferred credits, said claimant complying with the requisites mentioned in the preceding paragraphs, if proper. In such case the award for said price may also be requested, with the obligation of meeting said charges when they fall due, being subrogated in the place of the debtor, so far as the charges are concerned.

ART. 173. If any public sale has taken place in which bids equal to the debts preferred to that of the claimant were admissible, and the property should not have been sold, nor the award requested within the ten days following, the proceedings shall be closed without further remedy, the right of the claimant to bring an action being reserved, by way of the ordinary declaratory suit and proceedings to obtain an execution for the collection of his credit, with the costs of the summary proceeding, against any property whatsoever belonging to the persons responsible.

ART. 174. After the mortgaged estate has been sold or awarded, and the corresponding price has been paid, in a proper case, the instrument of transfer or the decree of award shall be officially executed by the inferior Court representing the owner of the mortgaged property, should the latter not appear voluntarily to execute it on the day fixed, which shall be the earliest one possible; and the new owner shall immediately thereafter be placed in judicial possession, should he request it.

After the estate has been sold or awarded and the price has been applied in the proper manner, the proper cancellations shall be made, in accordance with the provisions of the Mortgage Laws and those of the Civil Procedure. This shall be construed without prejudice to the other rights and actions which the remaining creditors or those who have not been wholly satisfied may exercise against the debtor.

ART. 175. The summary proceedings referred to in this Section can not be stayed by means of proceedings in the nature of a demurrer, nor by any other proceedings at the instance of the debtor of the third party in interest, nor at that of any other person presenting himself as an interested party, except in the following cases:

First. If documentary proofs are brought forward as to the existence of a criminal procedure on account of the forgery of the mortgage instrument which constitutes the subject-matter of the proceedings, in which a right of complaint has been admitted, or an order of prosecution has been issued.

Second. If a third person enters a claim of ownership, necessarily accompanying therewith his title to the estate in question, recorded in favor of said third person, prior to the entry of the debt of the claimant and not canceled in the Registry.

Third. If a certificate of a Register is presented, stating that the mortgage on which the proceedings are based is canceled, or an authentic copy of the public instrument of the cancellation of the same, with the note of presentation in one of the Registries which is to take cognizance thereof, executed by the claimant, or by his principals or legal representatives, the deed of conveyance, should any be in existence, also being shown by means of a document, in a proper case.

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In the first case the suspension shall continue until the criminal action has been terminated, the proceedings being continued then if the forgery has not been established.

In the second case it shall continue until the suit of the third person has been decided.

In the third case the Judge shall order the parties to appear before him four days after the citation; he shall hear the parties, admit the documents they may present, and he shall render such decision as he may deem proper, in the form of a decree, within two days.

This decree shall be appealable for review, and also to stay proceedings, when it orders the suspension.

All other actions that may be brought, by the debtor as well as by the third parties in interest, and other interested persons, including those regarding the nullity of the title or of the proceedings, or regarding the lapse, constitution, extinction, or amount of the debt, shall be discussed in the proper final trial, without ever causing a stay of the summary action for possession or avoiding them. The competency to take cognizance of this declaratory suit shall be determined by the usual rules.

At the time the action is brought, in accordance with the preceding paragraph, or during the course of the suit, a demand may be made that the effectiveness of the sentence be secured by the retention of the whole or of a part of the amount which, on account of the summary action for possession, is to be delivered to the claimant. The Judge shall order this retention made in view of the documents presented, should he consider the reasons adduced sufficient. If the claimant guarantees the amount which is ordered retained pending the decision of the declaratory suit, to the satisfaction of the Judge, the retention shall be raised. If the person requesting this measure is not well known to be sufficiently solvent, the Judge must demand a prior and sufficient security to answer for the costs of delay and the compensation for any other loss or damage which may be caused the creditor thereby.

Creditors who have their right recorded before the present law went into operation may select this summary procedure, but when the instruments of their credits do not contain an agreement of the debtor to a determined price for the auction, they must prove said agreement by means of a public document, or demand an appraisement, in accordance with the law of Civil Procedure, to prepare the notice of the public sale, it being understood that the rules of this section which fix the minimum figure to secure preferred obligations shall always be applicable. The procedure for the appointment of an expert shall be held when the formal demand for payment is made, and shall involve the same persons on whom the latter must be served.

If during the course of the proceedings the estate or some of the mortgaged estates pass into the hands of another owner, the latter, proving the record of his title, may demand that the decrees filed in the Clerk's office be presented to him, and the Judge shall consent thereto without stopping the course of the proceedings, subsequent proceedings being addressed to him as subrogated to the principal.

ART. 176. Against the decisions rendered in these summary proceedings the claimant may make use of the ordinary remedies prescribed by the law of Procedure, when it is not otherwise prescribed in this section. The remedies of other persons interested in any man-

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ner whatsoever shall never stay nor avoid the course of the summary action for possession regulated by this section, except in the cases of suspension briefly indicated herein.

The provisions of the law of Civil Procedure in force in Cuba, Puerto Rico, and the Philippines shall be applicable to these proceedings as supplementary, when not in conflict with the provisions contained in the Mortgage Law and these Regulations.

SECTION SECOND.—*Voluntary mortgages.*

ART. 177. Whenever, in accordance with the provisions contained in Article 141 of the law, a mortgage is created by a third person without sufficient authority to do so, and is ratified by the owner of the mortgaged property, a new record shall be made, in which shall be stated the reason causing it, the previous record being canceled. When a mortgage is created in favor of the State, civil corporations, or collective bodies, and its acceptance is not indicated in the instrument, a record shall be made, but without prejudice to this circumstance being entered by means of a marginal note, after the mortgage or bond has been approved by the proper authority or official.

This note shall have all its legal effects from the date of the record to which it refers.

ART. 178. To indicate in the Registry the compliance or noncompliance of conditions, or the fulfillment or nonfulfillment of future obligations, treated of in Article 143 of the law, any of the interested parties shall present to the Register a copy of the public document from which this appears, and, in default thereof, a petition signed by both parties requesting the entry of the marginal note and clearly stating the facts which must cause its entry.

If either of the interested parties refuses to sign the petition, the other may institute a suit, so that the matter, being brought up in a declaratory suit, the proper decree may be issued. Should the decree grant the demand, the Register shall make the marginal note by virtue thereof.

ART. 179. The marginal note treated of in the preceding article shall be worded in the following manner:

The obligation (here describe it) between A and B having been fulfilled (or not having been fulfilled), the condition (here describe it) having been complied with (or not having been complied with), on which question the efficiency of the mortgage created in this record number —— depended, A has presented (here a statement of the document by virtue of which the marginal note is requested), from which it appears that ———. Therefore, this mortgage shall be considered effective and in force (or not in force) from the date of its entry, and that this may appear I make this marginal note on ———. (Date and surname).

ART. 180. If the condition complied with is a condition subsequent, a formal cancellation shall be made, after the provisions contained in Article 178 have been complied with.

ART. 181. In accordance with the provisions of Article 144 of the law, when the act or agreement between the parties produces a total or partial novation of the recorded contract, a new record shall be made and the previous one canceled. When it causes the dissolution or inefficacy of said contract, entirely or partially, a complete or partial cancellation shall be made; and when the object thereof is to make effective a recorded contract dependent on conditions precedent, or

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to show the payment of a part of a mortgage debt, a marginal note shall be made.

ART. 182. Mortgage obligations payable to bearer, issued by the Societies of Public Works, can not be specially or expressly recorded. However, for the purpose of securing the mortgage right against third persons, which may be established in favor of the bearers thereof, according to the Code of Commerce, the mortgage must be created by virtue of a public instrument and recorded in the Registry, as prescribed in Article 146 of the law.

ART. 183. In the instrument creating a mortgage, securing obligations payable to bearer, referred to in the preceding article, the number and total value of the obligations issued, for the security of which the mortgage is created, must be stated, the series to which they belong, the number and face value of each one, the date or dates of their issue, the interest they bear, and other circumstances fixing and determining the kind of instruments and their values, as well as the property mortgaged—that is, whether it is the works or the profits or the entire line, or only of a part thereof. All these circumstances shall be stated in the record, which shall only be recorded in the Registry within the jurisdiction of which the principal point or beginning of the road, canal, or public work is situated, without prejudice to the records which must be made in other Registries, when the mortgage extends to the property referred to in the last portion of Article 72.

ART. 184. It being impossible to designate the name and surname of the person or persons in whose favor the record is made, because the obligations are payable to bearer, a statement shall be made that the instrument is created in favor of the holders of the obligations referred to in the instrument, and the part relating to each obligation.

ART. 185. Before recording the assignment of a mortgage credit, notice thereof shall be given the debtor, unless he has renounced this right in a public instrument, or when it comes within the provisions of Article 153 of the law, by means of a document drafted and signed by the Notary who certified to the instrument, stating therein only the date of the assignment, whether it is total or partial, and in the latter case the amount assigned, and the name, surname, residence, and profession of the assignee. The Notary shall serve this notice or have it served on the debtor.

If the latter can not be found at his residence, the delivery shall be made in the manner prescribed for summons in the first paragraph of Article 268 of the law of Civil Procedure for Cuba and Puerto Rico, and 252 of that for the Philippines.

ART. 186. If the debtor does not reside in the town in which the instrument is executed, the contract shall be recorded and the notice considered as served, but the assignor shall remain under the obligation to make a judicial request that search be made for said debtor, in order to communicate to him the notice referred to, in the manner prescribed in Articles 266, 268, and 269 of the law of Civil Procedure for Cuba and Puerto Rico, and 250, 252, and 253 of that for the Philippines, and under the responsibility established in Article 154 of the Mortgage Law.

ART. 187. Assignments of mortgage rights shall be entered in the Registry by means of a new record in favor of the assignee.

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Transfers shall not be entered in the Registry, nor shall it be necessary to notify the mortgagor thereof in the excepted cases mentioned in Article 185.

SECTION THIRD.—*Legal mortgages.*

ART. 188. Every Notary before whom a public instrument is executed involving a right to a legal mortgage in favor of some person shall notify the proper persons, if they take part in the instrument, of the obligation to create it and of the right to demand it, stating in the said instrument that this has been done.

ART. 189. If the person having the right to the legal mortgage is a married woman, a minor child, or a ward, the Notary shall also, by an official communication, notify the Register of the execution of the document, which he shall forward within the period of eight days, and in which he shall make a concise summary of the obligation contracted and of the names, status, and circumstances of the parties thereto.

The Register shall acknowledge its receipt to the Notary.

ART. 190. If the thirty days following the execution of the instruments referred to in the two foregoing articles have elapsed without the corresponding mortgage being created, and this mortgage is one of those which, in accordance with the law, can or must be demanded by persons who have not taken part in the instrument or contract giving rise thereto, the Register shall communicate the fact to said persons, or to the Department of Public Prosecution, in case it is the duty of the latter to exercise said right in accordance with the law.

The Department of Public Prosecution shall acknowledge receipt thereof.

ART. 191. Registers shall submit a report every six months to the President of the Audiencia of the instruments or contracts which have been submitted to the latter, in accordance with Article 189 of these regulations, and which have not produced the corresponding mortgage record, as well as of the steps they may have taken in compliance with the provisions contained in the preceding article.

DOWRY MORTGAGES.

ART. 192. The special mortgage which, according to number 3 of Article 169 of the law, must be created by the husband for the personal property, chattels, money, and other property not mortgageable which is delivered to him by reason of marriage, with the obligation of returning the same or its value, shall be created in the dowry contract itself or in a distinct public instrument.

ART. 193. The record of real estate which forms part of the appraised dowry shall state, in so far as may be applicable, the details required by these regulations for records in general, and in addition, in cases where it is proper to make full records according to the law, the following details:

First. The name of the person creating the dowry and the capacity in which he does so.

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Second. A statement that the marriage has been agreed to or has already been celebrated, and, in the latter case, the date of its celebration.

Third. The names, surnames, age, status (whether formerly married or single), and residence of the contracting parties, and the profession of the husband, should it be known.

Fourth. A statement that an appraised dowry has been constituted, and the amount thereof.

Fifth. A statement that a part of said dowry consists in the estate which is the subject of the record.

Sixth. The value given said estate in the appraisement of the dowry, stating whether this was arrived at by mutual agreement or by judicial intervention.

Seventh. The delivery of the dowry to the husband.

Eighth. The conditions stipulated in the marriage contract and which may affect the ownership of the husband in said estate.

Ninth. A statement of the acquisition of ownership by the husband, subject to the laws and special conditions stipulated.

Tenth. A statement that the legal mortgage on the estate has been created and recorded.

ART. 194. The record of the mortgage created by the husband on his real property in favor of the wife, the dowry being appraised, shall state, in so far as relevant, the details required for records of voluntary mortgages; and if full records are proper in accordance with the law, the following shall also be embraced therein:

First. The agreement to marry or the celebration of the marriage, stating the date of one or the other.

Second. The name, surname, residence, age, and previous status (whether married or single) of the wife, should they be known.

Third. A statement of the documents by which the dowry was created, the gifts offered by reason of marriage, by which the delivery to the husband of the dowry, or personal property in addition to the dowry, was made, stating the obligations which have been accepted by each one of the contracting parties in virtue thereof.

Fourth. The name, surname, domicile, and legal representation of the person who created the dowry, stating that the latter is appraised and that the Notary certifies as to its delivery.

Fifth. In case a mortgage is also created on account of gifts offered, or personal property in addition to the dowry delivered, a declaration that one or the other is considered as an increase of the dowry and that the Notary certifies as to the delivery of the personal property in addition to the dowry.

Sixth. The total amount of the dowry, of the personal property in addition to the dowry, and of the gifts, with the total appraised value of property of each kind delivered in payment, real estate, gold and silver ornaments and precious stones; deeds or documents of public and private credit, personal property, chattels, clothing, and money being considered as different kinds of property.

Seventh. The name, surname, and legal capacity of the person who demanded the dowry mortgage, and, in case it was created by virtue of a judicial decree, the deciding clause thereof, its date, the name of the Judge or Court which issued it, and that of the Clerk who certified it.

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Eighth. The acceptance and declaration of the sufficiency of the mortgage and a statement of the amount for which the estate is liable according to the distribution made in accordance with the instrument, among the properties mortgaged, by the person creating the dowry or who demanded said mortgages or who should, in a proper case, decide on the sufficiency of the mortgage; and if judicial proceedings have been instituted in the matter, the judgment rendered, its date, the name of the Judge or Court who issued it, and of the Clerk who certified the same.

ART. 195. When the dowry, or personal property in addition to the dowry, is delivered to the husband unappraised, and its title is recorded in the name of the wife, said delivery shall be recorded by means of a memorandum at the margin of the record referred to, even when it is in the old books, in the following terms:

The estate of this number ——, record number ——, has been delivered to A, as husband of Miss B, unappraised (or appraised at ——— pesetas) by virtue of unappraised dowry, created by C in a public instrument executed in ——— on such a date, before the Notary D ———, or by virtue of personal property in addition to the dowry of said lady and as an increase in the dowry created. (Date and surname.)

ART. 196. The mortgage created by the husband on his own property as security for the return of the personal property or chattels delivered as unappraised dowry, or as personal property in addition to the dowry, or as an increase of the dowry of the same kind, shall be recorded, in accordance with the provisions contained in these regulations for records in general, in the special Registries of the estates on which the mortgage is created.

ART. 197. The records treated of in the preceding article shall contain the details required for entries of appraised dowries, the only difference being a statement of the unappraised character of the same, and that the appraisement was made only for the purpose of fixing the amount for which the estate would be liable in case the property should not be in existence, or could not be returned, at the time of its restitution.

ART. 198. If the unappraised dowry property should not be recorded in favor of the wife at the time of the creation of the dowry mortgage, said record shall be made in her favor in the ordinary form and with the details stated in Article 193 of these regulations, with the exception of the fourth, sixth, ninth, and tenth; but the unappraised character of the dowry shall be mentioned in their place, and that the ownership continues vested in the wife, subject to the laws.

If the record has been made in this manner, the marginal note provided by Article 195 of these regulations shall be omitted.

ART. 199. When the Department of Public Prosecution receives notice of the delivery to the husband of the dowry of a woman who is an orphan or a minor, without the proper mortgage, he owning property on which it can be created, the Department shall appeal to the Judge or Court to compel the husband to create the legal mortgage, proceeding in this case in the manner prescribed in Article 166 of the law.

ART. 200. All dowry instruments must necessarily contain a statement of the mortgage which has been created, or which is about to be

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created in a separate instrument, or a statement to the effect that the dowry is not secured in this manner, the husband not possessing any mortgageable property. In the latter case, the husband shall formally declare that he does not possess such property, and shall obligate himself to mortgage the first real estate he may acquire, in compliance with the provisions contained in Article 186 of the law.

A wife, being of age, who owns the property which is to be given in dowry, and who has the free disposition thereof, need not insist that the husband obligate himself as established in the preceding paragraph; but in such case she must be notified of her privilege by the Notary, who shall state this fact in the instrument under his responsibility.

MORTGAGES FOR PROPERTY SET APART.

ART. 201. The inventory and appraisement of property set apart, which must be presented to the Inferior Court, according to Articles 190 et seq. of the law for the purpose of creating the proper legal mortgage, shall be those which have been made judicially or extrajudicially, and should neither have been made, those made by the father, the mother, or the ascendant referred to in Article 199 of the law, stating the value of the property appearing by a certified copy of the award of the same to them, and in default thereof by a certificate of the experts, or by the capitalization at the rate commonly used in each place.

ART. 202. The title deeds to be presented by the father, the mother, or the ascendant to prove the ownership of the property which they may offer to mortgage shall be at least those of their last acquisition, with a certificate of the Register from which the ownership of said property and the incumbrances thereon appear.

When the value thereof does not appear from the document indicated, others constituting prima facie evidence shall be presented which prove said value.

ART. 203. The period of ninety days shall be computed for the presentation of the proceedings referred to in Article 191 of the law, from the time the property was set apart; when the property set apart does not exist at the time of the celebration of the second marriage, or, if it is acquired substantially, in the case mentioned in Article 980 of the Civil Code, said period shall be computed from the date of its acquisition.

The proceedings referred to in Article 190 of the law, in the case of Article 199, shall be instituted within the ninety days following the date of the acceptance of the inheritance by the person obligated to set apart the property. After this period has elapsed, the institution of said proceedings may be requested by the persons interested, if they are of age, or otherwise by their legal representatives.

ART. 204. After the instrument creating the mortgage has been issued and approved by the Judge, two certified copies thereof and of the decree of approval shall be given the father, mother, or ascendant, so that, both copies being presented in the Registry, the proper records may be made in accordance therewith, one being filed in the Registry and the other returned to the inferior Court with the memorandum of record. If the father, mother, or ascendant refuses to

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receive said copies or to present them in the Registry, the Judge shall send them officially, ordering that the records be made in virtue thereof.

The Judge shall proceed in the same manner if, thirty days having elapsed from the time said copies have been delivered, the father, the mother or the ascendant does not return one of them to the inferior Court with the memorandum signed by the Register, stating that the mortgage has been recorded.

ART. 205. To enter in the Registry of property that estates have been set apart, a note shall be made at the margin of the proper record of ownership in the following terms:

The estate of this number ——, record number ——, is reserved in favor of Mr. A. and Miss B., children of Mr. and Mrs. D., according to the proceedings instituted in the inferior Court of ———, to determine and secure the property set apart for said children, in which proceedings a decree was issued, creating the mortgage and approved by the Judge, and its copy was presented in this Registry on such a day and hour, according to record number ——, folio ——, volume —— of the Day-book, which I return with the memorandum, stating that it has been recorded. (Date and signature.)

That property has been set apart as referred to in Article 199 of the law shall be stated by means of a similar marginal note, substituting the statement regarding the relationship by the proper one.

ART. 206. The decree creating the mortgage for the security of property set apart shall contain the details required for voluntary mortgages and also the following:

First. The date on which the father or the mother who created said mortgage have contracted a new marriage, or that of the birth of the illegitimate child referred to in Article 980 of the Civil Code; and in a proper case, that of the acceptance of the property by the ascendant.

Second. The name and surname of the deceased spouse, or that of the descendant, in a proper case, and the date of his or her death.

Third. The names and the age of each one of the children or relatives who have a right to have property set apart.

Fourth. The instrument on which said right is based.

Fifth. A statement of the property to be set apart and the value thereof.

Sixth. A statement that the proceedings prescribed by Article 190 of the law have been instituted, and at whose instance, or by Article 165, if the child himself or relative shall have demanded the mortgage.

Seventh. If the Judge has admitted the mortgage but declared its insufficiency, this fact shall be stated, and that the father, the mother, or the ascendant is obligated to mortgage the first realty or property rights he or she may acquire.

The entry of the decree shall be made, with regard to the property reserved, in accordance with the provisions contained in Article 205, and with regard to that mortgaged by the father, the mother, or the ascendant, with the details which a voluntary mortgage must contain and those stated in this article, and a brief statement of the deciding clause of the decree which may have been issued approving the decision, that the latter has been presented to the Registry and is returned with a memorandum of the records which have been made by virtue thereof.

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MORTGAGES FOR SECURING THE PROPERTY OF THOSE WHO ARE STILL UNDER PARENTAL AUTHORITY.

ART. 207. The persons who record property belonging to a child of their family, shall state this fact in the same record, and how said property has been acquired.

When this statement is omitted in the record, the persons who have a right, according to the law, to require the father or the mother to create a mortgage for the security of said property, must demand that it be entered by means of a marginal note opposite the record.

ART. 208. A mortgage record shall contain all the details required for a voluntary mortgage, and, besides, the following:

First. The age and status (whether married or single) of the child.

Second. How the property was acquired.

Third. The description of the same and its value, or the value given it for the creation of the mortgage, in the terms fixed in Article 252 of these Regulations.

Fourth. A statement to the effect that said mortgage has been voluntarily created by the father or the mother, or that it has been created by virtue of a decree and judicial proceedings, and at whose instance.

Fifth. The details of number 7 and following paragraph of those embraced in Article 206.

ART. 209. The judicial authority required by the father or mother to convey or encumber the property of the child shall also be necessary to record the instruments or contracts the purpose of which is to extinguish property rights on the estates of said children, such as assignment, renunciation, subrogation, cancellation, redemption, and rights of a similar character.

ART. 210. Notice of the judicial authority given in accordance with the preceding article and of Article 205 of the law shall be communicated to the persons designated in Article 204, and for the purpose mentioned in Article 201.

MORTGAGES BY REASON OF GUARDIANSHIP.

ART. 211. After the amount of the bond of the guardian has been fixed by the family council, and the estates offered in mortgage are considered sufficient by it, the mortgage shall be created by means of the proper public instrument.

ART. 212. The instrument creating the mortgage shall state the following, besides the details required for voluntary mortgages:

First. The name of the guardian and that of the person who may have appointed him.

Second. The character of the guardianship.

Third. The kind of document by virtue of which the appointment was made, and its date.

Fourth. The fact that there has been no remission of bond, or that, notwithstanding its remission, the family council has considered a bond necessary.

Fifth. The amount of the principal, income, and profits of the orphan or incapacitated person, separating the part consisting of real estate from other property.

Sixth. The amount of the bond which may have been required.

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Seventh. A report of the estates offered as security, with a statement of the value and incumbrances of each, and of the deed of its last acquisition, and everything referring to deeds of ownership and certificate of the Register and appraisements which may have been presented.

Eighth. Creation of the mortgage for the amount fixed for the bond.

Ninth. A statement of the amount for which each estate is mortgaged, according to the division which may have been made.

Tenth. A copy of the agreement of the family council approving the bond.

The mortgage record shall be made in accordance with the provisions contained in these Regulations and shall also contain the details mentioned in this article.

ART. 213. If the orphan or incapacitated person possess real estate, the family council, at the time of approving the mortgage for the other property, shall order that, opposite the records of the property or rights of the orphan or incapacitated person, a marginal note shall be placed, in the following terms:

The estate of this number ——, record number ——, is administered by A as guardian of B, appointed by C, in such manner, said B being a minor or incapacitated to administer his property; and this note is made by virtue of an agreement of the family council ——— of such date. (Date and surname).

The agreement of the family council must appear in a notarial instrument, which shall be forwarded in duplicate to the Register by the President of said council. One of the copies shall be returned by the Register with the memorandum of compliance.

If the minor or incapacitated person possesses property or property rights which are not recorded, the family council shall order their record, at the margin of which the note referred to shall be made.

ART. 214. The marginal note treated of in the preceding article shall be ordered made by the family council, even in case the guardianship is exercised without any bond having been required.

OTHER LEGAL MORTGAGES.

ART. 215. For the creation and record of the legal mortgages treated of in Articles 217 to 221 of the law, besides the requirements prescribed therein, those established by these regulations in the present title shall be taken into consideration.

TITLE VI.—MANNER OF KEEPING REGISTRIES.

ART. 216. In the office of each Registry a frame shall be constantly exhibited to the public, in which, with the necessary clearness, the following shall be stated:

First. The dates on which the old and the new Registries were established.

Second. The names of the municipalities embraced in the jurisdiction of the Registry and of the population of each one, stating whether any has changed its name; or, if it is known by more than

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one, all those it bears or has borne since the establishment of the Registry.

Third. A statement of the Registry to whose jurisdiction the towns may have previously belonged, stating the date on which they were annexed to the Registry under whose jurisdiction they have finally come.

Fourth. The names of the towns which did belong to the Registry and have been removed therefrom, with a statement of the date and of the Registry to which they have been transferred.

Fifth. The schedule of fees.

Also a notice to the public shall be placed in the same frame, stating that interested persons who present documents in the Registry may demand that the entry of presentation be made *at once*, and that the record be made *within the following fifteen days*, in the manner prescribed by Article 56 of these regulations, otherwise an action against the Register being admissible.

ART. 217. The books of the Registry shall be formed, arranged, and ruled in accordance with the models which the Registry and Notarial Division shall establish when their provision is arranged for. Each register shall request of the President of the proper Audiencia the books he may require, and after they have been procured he shall present them to the Delegate, who must rubricate them.

The President shall request the books of the Division. The latter shall keep an account of the books sent him, the former also keeping an account of those distributed to the Registers of his jurisdiction.

ART. 218. The Delegate shall rubricate the first and the last page of the Day Books and Registries of property.

In addition all the pages of said books shall be stamped with the seal of the inferior Court.

For the purposes of the preceding paragraph Registers shall forward the blank books to the proper Delegates, and, after receiving a notice from the latter, they shall appear in their office to receive them rubricated, stamped, and certified; after examining them the memorandum of conformity prescribed in Article 221 shall be made.

ART. 219. The books of the Registry must be bound in such manner that no sheet can be removed therefrom without leaving signs of its removal, and also so that they can not be rebound without its being known.

If, on account of the destruction or wear of the binding of some book, it becomes necessary to renew it, Registers may only do so after receiving authority from the President of the Audiencia and only in the manner and form he may determine.

ART. 220. The paper to be used in the books of the Registry shall be specially manufactured for this purpose, with the marks and countersigns which may be ordered by the Registry and Notarial Division.

ART. 221. On the first blank page of each book the Delegate who rubricates it shall enter a certificate, stating in words the number of folios it contains, the fact that none of them is stained, written on, or useless, and the date of its delivery.

At the foot of this certificate the Register shall make and sign a memorandum stating that he has received the book in the manner stated in said certificate.

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ART. 222. In each Registry of property a book shall be opened for each municipality or municipal district, as prescribed in Article 230 of the law.

When, at the instance of a Register, and for reasons of public convenience, the division of a municipal district into two or more sections is ordered, in accordance with the provisions contained in Article 232 of the law, the proper proceedings must previously be instituted, in which the President of the proper Audiencia shall take part.

The proper order of numeration of the estates prescribed in Article 8 of the law, and the strict order of dates to which reference is made in Article 59 of these Regulations, shall be construed as embracing estates situated in each municipal district.

The books shall bear the numeration prescribed by Article 226 of the law.

Besides these books and the Day Book, Registers shall keep such other books as they may deem convenient for the service, which shall only have an auxiliary character. They shall only be admissible as private documents, and shall be kept at the expense and according to the good judgment of the Register.

ART. 223. The official books shall be the Day Book of operations and those of the Registry.

The Day Book shall bear the following inscription on the title page:

Day Book of operations of the Registry of property of ———, volume ——, begun on —— day of ———, in the year ———.

On the page following the title-page the certificate and matters provided for in Article 221 shall be entered.

Each folio of the Day Book shall contain a blank margin sufficiently wide to make the proper marginal note therein, and the rest of the page shall contain horizontal lines for the purpose of writing thereon precisely the numbers of the records, forming a vertical column, and the records themselves immediately thereafter. Between the records no more space shall be left than is necessary for the signature of the Register.

If any marginal note can not be made in the Day Book because the margin of the corresponding record is already filled, the latter shall be reproduced so that said note may be made.

The books of the Registry shall bear their title on the cover in the following manner:

Registry of property of ———, Audiencia of ———, volume ——, of the municipality of ———, volume —— of the Archives of this Registry of property.

The first page after the title shall be exclusively used for the certificate and memoranda prescribed in Article 221.

ART. 224. Registers shall keep a Day Book of receipts, in which they shall enter in strict chronological order all the fees they may collect for any of the purposes mentioned in the schedule annexed to the Mortgage Law, or in these Regulations or other special measures which may be enacted, stating the amount received, the reason thereof, the individual or corporation who or which is to pay the same, and the number of the entry of presentation of the instrument, should there be any; and in case the fees arise through any of the judicial mandates referred to in Article 340 of the law mentioned, this fact shall be stated, with the date of the mandate, the inferior or superior Court which issued it, and the question in which it was ordered.

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ART. 225. Registers shall also keep a book called "*Of incapacitated persons*," in which they shall enter records relating to final decrees declaring the legal incapacity to administer or the presumption of death of absent persons, of those imposing interdictions, or declaring some person insolvent or bankrupt, or making any other declaration by which the civil capacity of persons is modified with regard to the free disposition of their property.

ART. 226. Said book shall be kept on stamped official paper, all of its pages stamped and rubricated by the proper Judge, who shall certify on the first page thereof as to the number of folios it contains. These shall be arranged in strict alphabetical order, assigning to each letter such number of folios as may be considered proper.

ART. 227. After the judicial mandate containing the final decree mentioned in Article 225 has been presented, Registers, after making the proper records in the books of the Registry of property, shall enter in the book above mentioned the names of the persons incapacitated to dispose of their property, with a brief extract of said document and a citation of the package in which it is to be kept. These records shall be made under the letter corresponding to the surname of the person interested, and shall receive a special correlative numeration under each letter.

ART. 228. After the records and entries treated of in the preceding article have been made, the Register shall make a memorandum at the foot of the mandate, stating this fact, if the person against whom it has been issued should possess property; or that it has not been recorded nor a cautionary notice thereof made, because he does not possess any; the proper record of the property he may subsequently acquire having been made in the book of incapacitated persons, citing the letter and number which said record bears.

ART. 229. At the margin of the entry of presentation of the mandate the Register shall make a note similar to the one mentioned in the preceding article.

ART. 230. The Register shall return the duplicate of the mandate or sentence, containing a memorandum that it has been complied with, to the proper superior Court, keeping the other duplicate in the files of his Registry, in the proper package.

ART. 231. If the person who has been declared incapacitated to administer his property or to dispose of it by virtue of some final decree, which has been entered in the book of incapacitated persons, acquires any real estate or property rights, the Register, immediately after the record stating the acquisition thereof, shall copy the sentence or mandate of the Court, referring to the duplicate on file in his office.

ART. 232. Registers shall keep two indices in the same manner, in which they shall enter records of all kinds that they may make in the books of the Registry from the date the Mortgage Law went into operation; one of them shall be called *index of property* and the other *index of persons*.

ART. 233. These indices shall be kept by municipalities, and in alphabetical order, in books or pamphlets made of common paper, its pages folioed and stamped with the stamp of the Registry.

ART. 234. The index of property shall be divided into two sections, including in one of them all that relates to rural property, and in the other all that relates to town property.

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ART. 235. In the section relating to rural property the Register shall state in the proper columns—

First. The name of the estate, and in its absence that of the locality or district in which it is situated.

Second. The village, place, hamlet, parish, quarter, or jurisdiction to which it pertains.

Third. The agricultural use to which the estate is put.

Fourth. Two opposite boundaries, selected from the four cardinal points, which must be the same for all estates.

Fifth. The number of the estate according to the Registry, and the book and folio containing the record.

ART. 236. The section of town property shall contain in its proper columns—

First. The name of the square or street on which the property is situated.

Second. The present number of the same, and the old one, also, if it appears.

Third. The number given it in the Registry, or the letter, if a cautionary notice is treated of.

Fourth. The volume and folio in which it is recorded.

ART. 237. In both sections there shall be a column in which to state the class of ownership or property right referred to in the record, such as *property*, *servitude*, *mortgage*, *annuity* (*censo*), *use*, or the modifications thereof caused by cautionary notices, such as *judicial attachment*, *incapacity to administer*, *etc.*

ART. 238. The index of persons shall embrace in the proper columns—

First. The name of the person in whose favor or against whom the ownership or property right in an estate is recorded or a cautionary notice thereof made.

Second. The volume and folio containing the records or notices in which the owner of any estate or property right is interested; and,

Third. All cancellations of records, notices, and marginal notes mentioned in the preceding column, citing the volume and folio of the former, as well as of the latter.

ART. 239. Should the Register observe any change in the name, bounds, or other important details of the estate, he shall make the proper correction in the indices.

The conversion of cautionary notices into records shall be stated in the proper columns.

ART. 240. In accordance with the provisions of the law and these Regulations, Registers shall arrange by months, quarters, half-years, or by years, according to the circumstances, four classes of packages—one for receipts, another for judicial mandates, another for public documents, and another for private documents.

ART. 241. The packages of each class shall be numbered separately and in their proper order, in the order in which they are made up. Documents shall be placed therein according to their dates.

ART. 242. After the period which each package must embrace, according to the division adopted, has elapsed, it shall be inclosed in a wrapper, the class of documents it contains and the period it embraces being written thereon, inclosing within the same wrappers an

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index rubricated by the Register, stating the date of each one of said documents.

ART. 243. In each Registry there shall be made by the Register a detailed inventory of all the books and packages contained therein.

Whenever a new Register is appointed, he shall take charge of the Registry in accordance with said inventory, signing it at the time of the delivery, his predecessor being responsible for what should appear contained in the inventory and not delivered.

At the beginning of each year the inventory shall be brought up to date.

ART. 244. No instrument creating any of the property rights mentioned in number 2 of Article 2 of the law can be recorded unless the ownership of the real estate is recorded in favor of the person creating said right.

When the right to be recorded is that of direct ownership, the right of the person having the ownership in the estate must be previously entered.

ART. 245. When the first entry requested is one transferring a property right to some estate, the ownership of which is not recorded in the old Registry, and the acquisition of the ownership of the estate and of the property right is proven by the title deed presented, or by documents which are prima facie evidence, dated before the day on which the Mortgage Law went into operation, two records shall be made.

The record of the ownership shall be made in accordance with the general rules, and that of the property right in the manner proper for its kind, but without again describing the estate, and only referring to the record thereof.

ART. 246. Cautionary notices and their cancellations relating to each estate shall be marked at the margin with letters instead of numbers, in strict alphabetical order.

If the notices and cancellations referring to any estate reach such a number that the letters of the alphabet are exhausted, they shall be duplicated, from the beginning, this system being observed throughout. In the margin of the Registry destined to the numeration of records only "notice or cancellation" letter ——— (the proper one) shall be written.

ART. 247. When the first entry relating to an estate is a cautionary notice, the provisions of Article 245 and 450 of these Regulations shall be observed, as the case may require.

ART. 248. Each folio of the books of the Registry shall contain a sufficient number of horizontal and perpendicular lines, for the purpose of writing thereon, and in no other manner, at the head: The number of the estate; then leaving a blank margin without lines and forming a vertical column, the numbers of the record or the letters of the cautionary notices, and immediately thereafter the entries of either one or of the cancellations. The blank margin shall have the width necessary to make the marginal notes therein, so that the latter shall not occupy more space than the records they refer to whenever this is possible.

ART. 249. In the books of the Registry all the entries, records, cancellations, and notes mentioned in Article 227 of the law shall be made.

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ART. 250. Registers, taking into consideration the movement of real estate in their respective subdistricts, shall assign to each estate the number of pages they may consider necessary, placing at the head of each one the number of the estate, when they begin to record them.

ART. 251. After the pages assigned to an estate have been filled, the number of the latter shall be transferred to another folio of the same book, or of a following one if there is no place in the former for the record. In such case, besides the number of the estate which shall be repeated, there shall be written *duplicate*, *triplicate*, and so on, and a reference to the folios and volumes in which the previous records may be found, in the following manner: "See folio from —— to ——, volumes ——." On the last of said folios, and in addition to the number of the estate, which is at the head thereof, shall be written "Continued in folio ———." The number and word *duplicated*, or *triplicated*, shall be written immediately after the printed words *estate number*, and the reference to the folios and volumes in the following space on the thick line at the head of each page of the books of the Registry.

ART. 252. When several estates are alienated or encumbered in one instrument, the proper record shall be made on the page assigned to each estate, stating in each record the other estates embraced in the instrument and the book, and the folio and number borne by the records referring thereto.

The statement which, according to the preceding paragraph, must be made in each record of the estates embraced in the same instrument, shall be made by means of a marginal note, besides stating in the body of each one of the records and before the words "*All that is stated appears, etc.*," that this estate is embraced in the same instrument (and if there are two or three, the number there may be), and that they are recorded in the book, the folio and number being stated in the marginal note of the said record.

Should they exceed three, the marginal note shall contain the following:

The other (stating the number there may be) estates embraced in the same instrument, by virtue of which this record has been made, are recorded in the volumes, folios, and numbers which are stated in the marginal notes of entry of presentation number ——, folio ——, volume —— of the Day Book.

ART. 253. The brief records which must be made in compliance with the provisions of Article 234 of the law shall only contain the following details:

First. The character and name of the estate, if it is stated, or, in a proper case, that of the property right.

Second. A statement of the incumbrances.

Third. The name, surname, and residence of the grantor and of the grantee of the estate or property right; the nature of the instrument or contract; the date and town in which the instrument was executed or issued, and the name of the Notary certifying to it, or of the authority or official who issued it.

Fourth. A reference to the full record, referring to the book and folio containing it.

Fifth. A statement to the effect that the fees have been paid the State, if any are due on the instrument or record, or that none are due.

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Sixth. Date, surname, and fees.

Seventh. A note shall be made in the margin, in the manner prescribed by Article 252 of these Regulations.

ART. 254. When the instrument is not one transferring ownership and refers to more than one estate, the ownership shall first be recorded, and afterwards a full record shall be made of the estate having the highest value only, or of any of them, if they are equal in value; all other records shall be made in accordance with the rules of the preceding article.

Registers shall strictly observe the rules prescribed in the preceding articles for making full or brief records, as may be proper, whenever the record or entry of two or more estates or rights is requested by virtue of a single instrument.

When the first entry requested relating to an estate or property right is a cancellation, article 455 of these Regulations shall be observed.

ART. 255. All amounts and numbers mentioned in records, cautionary notices, cancellations, and entries of presentation, shall be written out in full.

ART 256. Whenever several estates or property rights are mortgaged in one instrument, a full record shall only be made in the special Registry of the estate which bears the greatest incumbrance according to the instrument, or any of them if they are equally encumbered.

Other records shall be made with the conciseness required by Article 234 of the law, stating the special details for this purpose required by Article 253 of these Regulations.

When, through the fault or negligence of the Register, some real estate has been mortgaged by a person not having a right to create the mortgage, or without sufficient authority to do so, even when the contract has been subsequently ratified by a person legally capable, the record for this reason shall be null, and it shall be officially canceled, no fees being required, without prejudice to the liability of the Register.

ART. 257. When the instrument by virtue of which a cancellation is requested embraces several property rights or estates, situated within the jurisdiction of the Registry, it shall be recorded by making the proper entry, with the details required by Article 157, in the Registry of the estate in which the full entry of the ownership or property right which is to be canceled had been made.

To make the cancellation appear in the other estates embraced in the same instrument, the Register shall make the marginal note required by Article 158, also making a brief reference to the kind and date of the document, the names of the parties thereto, and of the authority or Notary who issued it.

ART. 258. The Registry shall be open for six hours on all working days, the office hours being previously fixed by the Register with the approval of the Delegate, and being announced in the Gazette of the proper island, in the official newspaper of the province, if there be any, and by means of posters fixed on the door of the office of the Registry.

The days which are holidays for inferior and superior courts shall be considered as such for the Registries.

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ART. 259. Registers shall not admit any document for record in the Registry, nor shall they make any entry of presentation, except during the six hours fixed in the preceding article; but at other times they may perform any other duties proper to their office.

ART. 260. When the hour for the closing of the Registry has arrived, the Register shall, on the line immediately following the signature of the last entry in the Day Book, make the closing memorandum required by Article 242 of the law, in the following terms:

It being (here the time) p. m., which is the hour fixed for closing, the Day Book is closed with (so many) entries made this day, embracing those numbered —— to —— (or), no entries having been made this day. (Date and signature of the Register.)

ART. 261. All instruments which are presented in the Registry for the request of any record or entry whatsoever, shall be entered in the Day Book.

ART. 262. In no case whatsoever shall the provisions prescribed in the preceding article be violated, even when it is seen that the instrument presented lacks some legal requisite.

When two contradictory instruments are presented at the same time, relating to the same estate, two entries shall be made in the Day Book, one after the other, numbered in their proper order, stating in each one that another relating to the same estate was presented at the same time, and stating the number which has been or is to be given to the same.

If neither of the respective instruments should contain a defect preventing the compliance with the request, the proper entry of each one shall be made, stating that this has been done because another instrument relating to the same estate having been presented at the same time, it is not possible to make the record, or, in a proper case, to enter the notice, until the persons interested or the Courts decide which record is to have preference.

In the margin of the proper records and at the foot of the documents a memorandum shall be made stating what has been done.

The documents shall be returned to the persons or the official from whom they were received, so that the former may make use of his right, if he should wish to do so, and the latter, in a proper case, may issue the decree he may consider advisable.

The entry made shall lapse at the end of the period fixed in Article 96 of the law, if within said period the interested persons do not prove by means of a written petition, ratified before the Register, that they have agreed to allow one of the entries to have the preference, or that no judicial proceedings will be instituted to obtain a declaration of preference. Should they come to an agreement, the Register shall consider the statement made by the interested persons and shall file the petition in the proper package. If, on the contrary, a suit is instituted, the claimant shall request that a cautionary notice be made of the claim, and after the necessary mandate has been issued by the Register, the latter shall enter the notice, making at the margin of the one previously entered a note of reference, drafted as follows:

A mandate for the cautionary notice of the claim instituted by ——, as appears from entry letter ——, folio ——, and book ——, having been presented this —— day, the adjoining entry continues effective until a final judgment shall have been rendered.

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The final judgment rendered shall be recorded in the Registry, converting the one which had been previously made, according to its terms, into a definite record or cautionary notice.

ART. 263. The entries of presentation referred to in Article 261 shall be made immediately on the presentation of the instruments, it not being permissible to postpone them to the following day, even when the parties interested consent thereto.

ART. 264. Neither shall the recording of said entry be interrupted after it has been once begun, even if other instruments are presented for record during this time, except to make a memorandum of the time they are presented.

Records already commenced must be finished even if the hour for closing has arrived.

ART. 265. Only one entry of presentation shall be made of each instrument, notwithstanding that several records must afterwards be made by virtue of said instrument.

Neither shall more than one entry of presentation be made when several instruments are presented to make up a single record.

ART. 266. Registers shall state, under their responsibility in the entry of presentation, the details mentioned in Article 240 of the law, and they may add, whenever they consider it advisable, any other details which will assist in distinguishing the instruments presented from any similar ones the record of which is also demanded.

ART. 267. To state in the entry of presentation the details required by Article 240 of the law, the rules prescribed for records shall be observed, in so far as they are applicable.

The situation of the estate shall be stated, if it is rural, by the district, subdistrict, or place in which it is situated, and if it is town property, by the name of the town, that of the street, square, or ward, and its number, should it have any.

Along the side of the signature of the Register, the person presenting the instrument shall affix his own, no matter what kind of instrument it is, and if he fails to do so, a witness shall sign. For this purpose, when the record is requested by authorities who do not reside where the Registry is situated, they shall forward the instruments to any of their subalterns who reside in that place, and in their absence, to the representative of the Department of Public Prosecution, so that the latter may present the instrument.

ART. 268. After the proper record has been made in the book of the Registry, a memorandum in the following terms shall be made at the margin of the entry of presentation:

The record (cautionary notice or cancellation) referred to in the adjoining record in volume —— of the municipality ——, folio ——, estate number ——, record number ——, has been made. (Date and surname of the Register.)

ART. 269. After the entry of presentation has been made, the Register shall deliver to the person who presented the instrument a receipt for the same, should he request one, in which he shall state the kind of instrument presented, the date and hour of its presentation, the volume and folio containing the record, and the number of the latter.

The Register, in returning the instrument after the entry has been made, shall take up the receipt he may have given therefor, and in its absence he may request that one be given him for the return of said document.

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ART. 270. In order that the officials, clerks, and assistants of the Registry may sign the entries of presentation in the capacity of witnesses, the Register must state, under his responsibility, that at the time of making them it was not easy to find other persons in the town who might sign as witnesses.

ART. 271. Whenever a Register suspends the record or entry of some instrument, or the cancellation thereof, he shall return it to the person presenting it, but making a memorandum thereon stating—

The record of this document has been suspended (briefly stating the reason for the suspension), as appears from the cautionary notice of such date contained in volume —— of the Registry, folio ——. (Date and signature of the Register.)

ART. 272. The memorandum which, in accordance with Article 244 and the second paragraph of Article 249 of the law, the Register must affix at the foot of instruments, shall be drawn in the following terms, according to what has been done by virtue thereof in the Registry.

If it has been recorded:

The foregoing document has been recorded at folio —— of volume —— of the municipality of ———, estate number ——, record number ——. (Date, signature, and fees.)

If a cautionary notice has been requested and made:

A cautionary notice has been made of the foregoing document at folio ——, volume —— of the municipality of ———, estate number ——, record number ——. (Date, signature, and fees.)

If a record has been requested and on account of some error contained in the instrument a notice has been entered at the request of the party interested:

The record of the foregoing document has been suspended on account of the following defect ——— (or defects), and in the meantime a cautionary notice has been made at folio —— of volume —— of the municipality of ———, estate number ——, notice letter ——. (Date, signature, and fees.)

If a cautionary notice ordered by a judicial mandate can not be made for good reasons, and in place thereof a memorandum of suspension has been made:

The cautionary notice ordered in the preceding mandate has been suspended, because it contains the defect ——— (or defects), and a memorandum of suspension has been made in place thereof at folio —— of volume —— of the municipality of ———, estate number ——, note letter ——. (Date, signature, and fees.)

If the entry which has been made is a cancellation:

The cancellation in accordance with the foregoing document has been made at folio —— of volume —— of the Registry of the municipality of ———, estate number ——, record of cancellation number ——. (Date, signature, and fees.)

When there is not sufficient space in the instrument presented to make the memorandum, the Register shall begin it at the foot of the document with the words or syllables possible, continuing on a separate sheet, which must be furnished by the interested persons.

ART. 273. If the entry or record of several estates or rights has been made, all of which are contained in one instrument, the memorandum made at the foot thereof shall state precisely and laconically what has been done, noting also at the margin of the description of the instrument of each estate or right, its number, folio, book, and

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number of the record or letter of the entry which has been made regarding the same, without collecting any fees for these statements.

ART. 274. The Register, after having made in the Day Book the proper entry of presentation of an instrument which is to be returned for the correction of some error, according to Article 17 of the law, shall make the following rubricated memorandum at the foot thereof:

Presented (on such a day), Day Book number ——.

If the thirty days referred to in Articles 17 and 19 of said law have elapsed without the instrument having been taken up, the memorandum shall be made in the following manner:

The record of the above instrument has not been made, on account of the following error ——— (or errors) therein, and thirty working days having elapsed without its having been corrected. (Date, signature, and fees.)

ART. 275. No record or entry shall be made unless the payment of the taxes on property rights or on the alienation of the property is proven, if any arise out of the instrument or contract, or the note of exemption stamped by the liquidating office appears thereon.

The payment of the tax referred to shall be made through the branches of the Public Treasury or through the Register of property himself, should he have been delegated for this purpose by the proper competent authority.

The offices of the Treasury shall issue, besides the proper receipt, a certificate on stamped official paper, stating the sum received and all its details.

In case records of a single document are to be made in more than one Registry, such a number of certificates shall be issued as there are Registries in which it is to be recorded.

The interested parties shall present with the receipt the proper copy of the certificate of the sum paid, on which the Register shall make a memorandum with regard to having verified it and found it correct.

If the record is to be made in one Registry only, the Register shall keep the receipt, making a memorandum of this fact on the certificate presented to the party interested; and when the document is to be recorded in several Registries, each Register shall file the copy of the certificate presented to him, with a memorandum stating that the receipt is in the possession of the party interested, the latter being taken up in the last Registry in which the record is to be made, and a new memorandum made on the certificate remaining in the possession of the interested party that the receipt has been filed.

ART. 276. The receipts, or, in a proper case, the certificates referred to in the preceding article, shall be filed in order of their dates, in numbered packages, after having stated on each one the volume and folio in which the respective record can be found, its number, and that of the estate to which it refers.

ART. 277. The entries or memoranda which are to be made in the books of the Registry of property, by virtue of the documents referred to in Article 80 of these Regulations, can not be certified to by the signatures of the Registers.

This shall be done by the representative of the Department of Public Prosecution, under his responsibility, or, in his absence, by a lawyer of the subdistrict who has attained his majority, who shall receive the proper fees therefor in accordance with the Schedule.

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ART. 278. In case a Registry does not possess books in which to make records, or does not possess a Day Book, notwithstanding that they have been requested of the President of the Audiencia in ample time, the proper provisional books shall be opened in said Registry, formed by one or several quires of full sheets of paper, and the number of pages which may be considered necessary by the Register.

ART. 279. The books which it may be necessary to open, in accordance with the provisions of the preceding article, shall be folioed; on their pages the margins necessary for any proper memoranda shall be left; they shall be stamped with the stamp of the Registry, and rubricated by the Register and the Judge of First Instance, who shall also sign the first page with their full signature, on which, as a heading, reference shall be made to said Article 278.

ART. 280. In these provisional books, such entries of presentation, notices, and marginal notes shall be made as may be proper by virtue of the instruments presented, in the same manner in each way and every one of their parts, and with the same effect as if they had been made in the regular books; but in the provisional books of the Registry they shall follow each other in the strict order of their dates, without any pages or intervals being left between them.

ART. 281. Memoranda to the effect that a document has been presented, entered, or recorded, made at the foot of an instrument in accordance with the provisions contained in Article 244 of the law, and 271 and 274 of these Regulations, shall also be made in accordance with said provisions, without any other difference than the substitution for the volume and folio of the stub-book (regular book) of the folio and number of the provisional one.

ART. 282. The Register, immediately on receiving the proper stub-books, shall officially inform the Judge of First Instance of the subdistrict thereof, so that on the following day, if it is a working day, the closing of all the provisional books may take place in the office of the Registry, after their examination by the Judge to assure himself as to their having been kept in accordance with the provisions contained in these Regulations; and, finding them correct, he shall make a memorandum at the end of each one, stating the number of records it contains, and that there are no blank spaces, corrections, erasures, nor interlineations therein, or stating those it does contain, this memorandum being signed by the Judge and by the Register. If the books are not in conformity with the provisions contained in the preceding articles, the closing memorandum shall be made notwithstanding this, but stating therein the defects they contain, the Judge communicating the same to the President of the Audiencia for the proper proceedings.

When the provisional books are Day Books, the Register, immediately on receiving the proper official books, shall begin to transfer the records contained in them to the new books, but without closing the former immediately, as they must continue open, and such entries made therein, until all of them having been transferred to the proper stub-books, the instruments presented for record or entry in the Registry may be continued therein.

ART. 283. After all the provisional books have been closed, all the records relating to instruments on file in the Registry or which are presented, shall be entered in the stub-books; but if said instruments

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refer to estates regarding which there is some entry in the provisional books, said record must first be transferred to the stub-books.

ART. 284. Registers can not issue any certificates referring to entries contained in the provisional books which have not been transferred to the stub-books.

ART. 285. Said officials shall make the transfer of all the records contained in the provisional books to the stub-books as quickly as possible, without neglecting current business.

ART. 286. When the transfer has been fully completed, the Register shall officially give notice thereof to the Judge of First Instance of the subdistrict, so that, on the day he may fix, the verification of the records transferred may take place in the office of the Registry; and if it appears that they have been faithfully and accurately transferred, this shall be stated by means of a memorandum made in each of the provisional books immediately after the closing memorandum, which shall be signed by the Judge and by the Register; and, after this has been done, said books shall be filed in the Registry and the Register shall communicate this fact to the President of the Audiencia, who shall communicate it in his turn to the Registry and Notarial Division of the Colonial Department.

ART. 287. In case any Register has been retired from office before having completed the transfer to the stub-books of the records made in the provisional ones, he must defray any expenses that the person continuing the transfer may incur thereby. The heirs of a deceased Register shall, in a similar manner defray, in a proper case, the expenses incurred by the person making the transfer of said entries.

ART. 288. The parties interested shall, by common consent, fix the amount of said expenses, and should they not come to an agreement they shall submit their differences by way of administrative proceedings to the Judge of First Instance, who shall transmit them to the President of the Audiencia with his report, so that the latter may decide what he may consider just. This decision shall be carried out without prejudice to the right of the person who considers himself injured to institute judicial proceedings. These claims shall never be an obstacle in the way of the person in charge of the Registry from making the transfer of the records contained in the provisional books to the stub-books.

ART. 289. When cases occur in which the provisions contained in Articles 278 and the following have to be applied, Registers may forward to the Registry and Notarial Division of the Colonial Department, through the President of the proper Audiencia, the information showing the cost and increase of work caused by this exceptional service, so as to embrace it in their reports for any purpose they may deem proper.

TITLE VII.—CORRECTION OF ENTRIES IN REGISTRIES.

ART. 290. Whenever a Register shall observe that some material error has been committed in any records or entries which he can himself correct, in accordance with Article 254 and the second paragraph of 256 of the law, he shall do so, making a new record at his own expense and under his responsibility in the same book and with the proper number.

This correction must be made, even when the record to be corrected has already been canceled.

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When in making a record a word is incorrectly written, for example, Banga for Batangas, legatees for legatee, mortgagor for mortgage, etc., and it is observed at the time, it may be corrected at once without making a new record, in the following manner: I mean Batangas, I mean legatee, I mean mortgage, placing it in parentheses. With the exception of these cases and other analogous ones, the general rule shall be followed.

ART. 291. If the error has been committed in a record, cautionary notice, or cancellation, the correction shall be made in the following manner:

(In the margin): Correction of record number —— (or) of the cautionary notice in favor of ——— letter —— (after the number corresponding to the record. The words (state here the words) of the record (or cancellation) number —— (or of the cautionary notice in favor of ——— letter ——) being incorrect (or omitted) and the instrument being on file in the Registry, I correct it in the following manner: (Here the corrected record, underlining the new or amended words which it contains.)

ART. 292. If the error has been committed in some entry of presentation or marginal note, the correction shall be made by means of a new entry in the margin of which, if it is possible, and otherwise, as closely thereto as practicable, the following words shall be written:

For the correction of the entry number ———.

Should the entry not have any number, the folio, the name of the person in whose favor it has been made, and the letter, should it bear any, shall be written in place thereof.

ART. 293. If the error committed is one which can not be corrected, without the formalities prescribed in Article 256 of the law, the Register shall, in writing, request the appearance of the person interested, who must have the instrument in his possession, so that, by exhibiting it and in his presence, the correction may be made.

ART. 294. Should the party interested not appear on the second invitation, or if he does appear he should oppose the correction, the Register shall apply by a communication to the Judge of the subdistrict, so that he may order it corrected; and the latter, hearing the party interested in the manner prescribed for the creation of legal mortgages, or declaring him in contempt should he not appear, shall issue a decree refusing or ordering that the correction be made by virtue of the instrument in possession of the person interested and which has been presented, or ordering that a certified copy be officially made of the part of the instrument necessary to decide as to the correction, if said instrument is not presented.

The costs of the proceedings shall be defrayed by the Register, and those for the preparation of the certified copy by the person interested who has been declared in contempt.

ART. 295. When the Register does not know the residence of the person who has the instrument which is the subject of the incorrect record in his possession, he shall summon him three times at intervals of thirty days, through the official newspaper of the province. If said period has elapsed and he has not appeared, the Register shall apply to the Judge of the subdistrict, who shall proceed in the manner prescribed in the foregoing article.

ART. 296. In the case mentioned in the two foregoing articles the correction shall be made in the manner prescribed in Article 291, but

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suppressing the words "the instrument being on file in the Registry," and inserting in their place:

N., the person interested therein, having been summoned and having shown me the instrument, in conformity therewith, or, by virtue of a decree of ———, issued in ———, I correct said record, etc.

When the correction is made by virtue of the new certified copy of the instrument, mention thereof shall also be made.

The certified copy shall be filed in the proper package.

ART. 297. When the Register observes any error of judgment of those mentioned in No. 1 of Article 255 of the law, and if he believes that some one might suffer damage thereby if it is not corrected, he shall summon all the persons interested in the incorrect record for the purpose of informing them as to the error committed, and consulting their wishes as to the proper correction.

If all of them appear and unanimously agree to the correction, their agreement shall appear by a memorandum made by the Register, who shall sign it, together with the parties interested, and the proper record shall be made in virtue thereof. This memorandum shall be filed in the proper package of the Registry.

ART. 298. Any of the parties interested in a record, who may observe a material error or an error of judgment therein, may, with the consent of the others, request the Register to correct it; and should the latter not consent thereto, or any of the interested parties oppose it, he may submit a similar petition to the Judge of the subdistrict, proceeding in such case in the manner prescribed in Article 294.

ART. 299. The Judge shall declare, and the Register shall recognize, if proper, the error of judgment only when there is no doubt as to its existence, in accordance with the rule established in Article 260 of the law; and in this case the correction shall be made in virtue of a new record, in accordance with the original instrument.

ART. 300. When the error is caused through a vague and incorrect statement of a part of the instrument, which was construed by the Register in a manner differing from the understanding of the parties interested, the Judge of the subdistrict shall not declare said error, nor shall the Register correct it; but the right of the parties shall be reserved to have the interpretation of the contract judicially declared, or to make a new one in which the doubtful part shall be stated with greater clearness.

ART. 301. After the correction of a record, cautionary notice, or cancellation has been made, the entries referring thereto in the other books shall also be corrected if they are also incorrect.

This correction shall also be made by means of a new record in the manner prescribed in Article 292.

ART 302. The correction of an error of judgment shall be made in the same manner as that of a material error, but citing, instead of the words which have been materially mistaken, the entire clause which is to be corrected. Thus, instead of "the incorrect words," shall be written: "The following phrase is incorrect," etc.

TITLE VIII.—ADMINISTRATION AND INSPECTION OF REGISTRIES.

ART. 303. The Registry and Notarial Division, established by Article 265 of the law, shall be divided into three Bureaus, to be called—the first, of Registries and Civil Marriages and Mercantile

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Registry; the second, Registry of Property and of Statistics; the third, the Notarial. Notwithstanding this division of bureaus, the Secretary may require of the Chief, or of the Bureaus of the Division, provisionally or permanently, any other services or labors for which it is advisable to use the services of their clerks. The Chief of the Division and the two officials thereof shall be in charge of the Bureaus, assisted by the necessary clerks and copyists.

The Chief of the Registry and Notarial Division shall submit to the decision of the Secretary all questions which require his approval, and shall himself issue the decisions which do not require it, in accordance with Article 268 of the law.

In case of absence, sickness, or for any other reason accidentally preventing the Chief of the Division from discharging his duties, he shall be substituted for all legal intents and purposes by the official thereof designated by the Secretary.

ART. 304. Presidents of Audiencias shall communicate directly with the Division and shall comply with the orders they may receive from the same in all that relates to the matters submitted to them.

ART. 305. The roll of the officials of the Division referred to in Article 266 of the law shall be annually published in the Gazette.

When to fill some vacancy in the position of copyist there are two receiving the same salary and of the same standing in the next lower class, their order on the list shall decide as to the preference.

The officials of the Division who are forced to leave their duties on account of the suppression of the positions they were filling shall receive the same places, should they be reestablished.

ART. 306. The office regulations shall determine the duties of the employees of the Division and all that is necessary for a prompt and accurate discharge of business.

ART. 307. To hold the competitive examinations for the positions of assistants of the Registry and Notarial Division of the Colonial Department in the case mentioned in Article 266 of the law, the following rules shall be observed, which shall be embraced in each call:

First. The examinations shall be advertised in the Gaceta de Madrid at the proper time.

Second. The applicants shall present their petitions to the Registry and Notarial Division of the Colonial Department within the period of sixty ordinary days, computed from the day following the publication of the announcement, accompanying thereto at the same time the document showing that they possess the qualifications required by Article 288 of the law, and that they are not embraced in any of the cases mentioned in Article 299 of the same.

Should the applicants not have the title of lawyers, they shall present a certificate of the Secretary of the University, stating that they possess the necessary qualifications to obtain said title, it being understood that they must have obtained the latter before being appointed.

In announcing each competitive examination, the Division shall state the documents necessary to prove the other details required by this rule. The applicants may also present all documents showing their merits, services, and circumstances.

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On the day following the period mentioned, the Division shall transmit to the Gaceta de Madrid, for publication therein, a list or statement containing the names of all the applicants.

Third. The Chief of the Division shall declare all the applicants eligible to take part in the examination who may have fulfilled the requisites mentioned in the preceding rule, within the period of the call, and shall refuse the applications of all the rest, and publish in the Gaceta a list of the persons admitted. Against this decision there shall be no remedy whatsoever.

Fourth. The Board of Examiners shall be composed of: The Chief of the Division, or the person discharging his duties, who shall be President of the same; an Associate Judge of the Audiencia of Madrid; two Professors of the law branch of the Central University; one lawyer of the Madrid bar; one Register of property of the first class; and one official of the Division mentioned, who shall act as Secretary. The members of the Board shall be appointed by the Colonial Secretary for each examination held, said appointments being published in the Gaceta de Madrid.

The office of members of the Board in question is honorary and without pay.

Fifth. There shall be three public examinations—two theoretical and one practical.

Sixth. The first examination shall consist of answering twelve questions selected at random on the following subjects:

Two on Spanish Civil Law.

Two on the mortgage legislation for the Colonies.

Two on legislation regarding Registries and civil marriage in said provinces.

Two on notarial legislation of the same.

Two on general colonial legislation.

One on administrative law.

And one on commercial law.

Seventh. The second examination shall consist of writing an essay on a subject selected at random from among one hundred on the following matters: Spanish Civil Law; Mortgage legislation for the Colonies; legislation relating to Registries and civil marriage in said provinces; the Notarial legislation of the same; Administrative law; Commercial law, and general colonial legislation.

Eighth. The practical examination shall consist of preparing papers on mortgage legislation, Registry, or civil marriage or the Notarial law, and stating the proper proceedings. For this purpose the Division shall prepare twenty subjects relating to the same number of papers.

Ninth. Whenever a call for a competitive examination is published in the Gaceta de Madrid, a list of three hundred questions for the first examination shall be published immediately following it and the hundred subjects relating to the second.

Tenth. The Board shall announce in the Gaceta, and fifteen days in advance, the locality, days, and hours on which the examinations are to commence.

Eleventh. On the day fixed for the commencement of the examination, the Board shall publicly draw by lot to determine the order in which the applicants shall be called up for each examination.

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If, after a competitor has been called, he does not appear at the hour fixed, his turn shall be taken by the one having the number immediately following, and the former shall receive a new number following the last number issued.

If, at the second call, he should not appear, he shall be considered as having abandoned the examination.

Twelfth. The competitor shall begin the first examination by drawing by lot the twelve questions mentioned in rule No. 6, which he shall answer verbally, without ever being permitted to employ more than one hour and a half for this purpose.

Thirteenth. For the second examination, one of the competitors shall draw by lot the only theme which is to be the subject of the essay, which must be written in the own handwriting of the competitors within the period of twelve hours at the most, being constantly watched by a member of the Board, and being permitted to make use of books.

After the essay has been completed, they shall deliver it to the member of the Board present, who, in the presence of the competitors, shall inclose it in an envelope, sealing it with sealing wax, the person interested placing his signature thereon.

On the day fixed by the Board, the competitor who wrote the essay shall read it. Should any of them not be able to do so, he shall state the reasons preventing it to the Board, who shall decide as may be proper, according to the particular cases.

Fourteenth. The practical examination shall be held by the competitors on the subject which one of them has previously drawn by lot, proposing the proceedings to be taken thereon, and completing it within the period of eight hours, during which time they shall be watched in the manner prescribed in the preceding rule, but being permitted to use books.

After the paper has been concluded, they shall deliver it to the member of the Board present. On the day fixed by the Board this paper shall be read.

Fifteenth. The Board shall see that at least half of the questions to be included in the first examination are deposited each day in the box.

Sixteenth. The Board shall not give any advice nor ask any questions of the competitors concerning the subjects of the examinations, with the exception of the right of the President in the discharge of his duties.

Seventeenth. After each of the three examinations, the Board shall classify the competitors in secret session.

The competitor who shall not have passed any of the examinations can not take the following ones.

A list of the applicants who shall have passed each examination shall be exhibited in the building where they take place, consecutive decisions being announced in the same manner.

Eighteenth. At the conclusion of the three examinations, the Board shall prepare a list, in which all the competitors who shall have passed shall be placed in order of merit. This order shall be fixed by a special vote, held for each place, each voter depositing a slip of paper in a box, containing the name of the person who, in his judgment, is entitled to the number voted on.

Nineteenth. The votes shall always be secret.

The classification shall be decided by the majority of votes.

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In case of a tie, the President shall cast the deciding vote.

Twentieth. The Board shall propose for the vacant places, which were announced to be open to competition, and for the places which are vacated before the conclusion of the examination, those competitors who obtained the first numbers, so that the position of the highest class and salary shall be filled by No. 1, the following one by No. 2, and so on.

Twenty-first. The President shall submit to the Colonial Secretary the names of the persons proposed for each place, so that the appointment may be made.

Twenty-second. The Board can not act without the presence of at least five of its members. Judges who for any reason whatsoever have not taken part in the first examination of the contest, can not take part in the voting.

Twenty-third. The proper minute book, rubricated by the President and signed by the Secretary, shall be kept, who shall transmit it to the Registry and Notarial Division of the Colonial Department at the conclusion of the examinations.

ART. 308. Competitive examinations for the positions of copyists of the Registry and Notarial Division of the Colonial Department, in the case mentioned in Article 266 of the law, shall be subject to the following rules:

First. To take part in the competitive examinations it is necessary to be a Spaniard and a layman, over twenty years of age, and of good moral character.

Second. The applicants shall present their requests to the Registry and Notarial Division within the period of fifteen ordinary days, computed from the day following the publication of the announcement, transmitting at the same time a certified copy of the certificate of birth or, in a proper case, the certificate of baptism, and a certificate of status (whether married or single) and of good conduct, properly dated by the Mayor of the town of the domicile of the person interested. They may also present all documents showing their merits, services, and circumstances.

Third. The Board of Examination shall be composed of the Chief of the Registry and Notarial Division, or the person discharging the duties of that office as President, and two professors of penmanship in public educational institutions, whom the Secretary shall appoint for each examination, the one who has been appointed last discharging the duties of Secretary.

Fourth. There shall be two public examinations, one practical and one theoretical. The first examination shall consist of three subjects, namely, grammar, elementary arithmetic, and writing. The second examination shall consist in answering two questions selected by lot and referring to the geography of the Colonies.

Fifth. The subjects for the second examination shall be made public at the time of the call.

Sixth. For the first examination the Board shall require each competitor to read a paragraph of Spanish prose, which he shall analyze. At the conclusion of this part of the examination by all of the competitors, they shall simultaneously take part in the second and third parts of the examinations, some arithmetical problem being given by the Board for solution by the competitors, immediately thereafter requiring them to write from dictation in their ordinary handwriting,

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and to copy the draft which shall be given them, in Spanish writing, for half an hour, and in the different kinds of writing they may be acquainted with for another half hour. After this work has been signed it shall be delivered to the Board for their determination.

Seventh. The competitors shall draw by lot the two questions prescribed in rule number 4 for the second examination, which shall be answered orally.

Eighth. The Board shall not hold any sessions without the presence of two members. Any member who, for any cause whatsoever, has not taken part in the oral examination of any of the competitors, can not take part in the voting.

Ninth. The last paragraph of rule 2 of the preceding article, and rules 1, 3, 10, 11, 16, 17, 18, 19, 20, 21, and 23 of said article shall be applicable to these competitive examinations, and shall be published in each call, together with the provisions contained in this article.

Whenever a President of an Audiencia shall select from among several Judges or subdistricts or municipal Judges in accordance with Article 269 of the law, the person who is to be delegated to the inspection and surveillance of the Registry in a town where there is more than one Court of First Instance, or, in a proper case, more than one inferior municipal court, or must delegate an Associate Judge to make an extraordinary inspection within or outside of the jurisdicton of the Audiencia, he shall make the appointment in writing, communicating it to the Register and to the appointee. In the same manner, for the purpose of making an extraordinary inspection, the Judge of First Instance, or, failing him, the municipal Judge of the subdistrict in which the Registry is located, may be delegated.

ART. 310. For the inspection and visit of Registries, the President of the proper Audiencia shall communicate to the Delegates such instructions, in writing, as he may deem necessary, which must be strictly observed by them, they being responsible for any omission or error in their fulfillment.

ART. 311. The persons delegated for the inspection of a Registry shall make the quarterly inspection by going to the Register's office, accompanied by the Secretary of the proper inferior Court, but not during the hours fixed in each office for the public service. The Delegate shall examine all the books kept by the Register, the documents which are awaiting entry, and the condition of the files.

The reports of the quarterly inspection shall contain the following details:

First. The number of documents awaiting record on the day of the inspection.

Second. The number of the entries of presentation made during the quarter, and the dates of the memoranda written in the margin thereof.

Third. A statement that these are signed by the Register and by the person interested, and the number which are signed by the substitute, or which are not signed at all.

Fourth. Whether any words have been corrected, erased, or interlined in the books since the date of the last inspection.

Fifth. Any omission or lack of formality or superficial defect observed by the Delegate in the books, documents, or office of the Registry.

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Sixth. In cases in which the Register, not having given any bond, is obliged to deposit a quarter of his fees, the report shall state whether that part of the fees collected from the date of the last inspection until five days before the present inspection has been deposited.

If, before the inspection is concluded, the time for opening the Registry arrives, the opening shall be deferred until the inspection has been concluded, provided it does not exceed two hours more; and after this time has elapsed without finishing the report, the inspection shall be deferred until the following day.

If the inspection is not made on the last day of the quarter because it is a holiday or for any other legitimate reason, the cause of the delay shall be stated in the report.

After the report has been made, it shall be signed by the Delegate, the Register, and the Secretary; the first writing with his own hand in the margin of the last entry contained in the Daybook, and in the books of the Registry, the date of the inspection and the word *Inspected*, writing his signature immediately thereafter.

He shall send a copy of the report of this inspection to the President of the Audiencia within three days.

ART. 312. Presidents of Audiencias shall make an extraordinary inspection, or order one to be made, in the following cases:

First. When it is so ordered by the Division.

Second. In the case mentioned in Article 359 of these Regulations.

Third. When the proceedings mentioned in Article 308 of the law are instituted.

When the reason for the inspection is that the Registry is vacant, it shall include the period during which it has been in charge of the last Register; but if a general extraordinary inspection was previously made, it shall only include the period which has elapsed since said inspection.

In ordering a special inspection to be made, it shall be stated whether it is to be general or special; stating in the first case what period it is to include, and in the second the books and documents which are to be examined, and it shall be communicated to the President of the Audiencia.

No matter who is the official who makes the inspection, he must be accompanied by a Secretary, to be appointed by the authority who ordered the inspection to be made.

ART. 313. After the Inspector has arrived in the town in which the Registry is situated, he shall advise the Register, so that the latter may be in his office on the day and hour fixed by the former for the beginning of the inspection, taking care that said inspection is made before or after office hours.

If the person in charge of the Registry should refuse to exhibit the books or should not be present during the hours fixed for the inspection, the Inspector shall make a memorandum of this fact and shall communicate it to the President of the Audiencia for the proper action.

When an inspection can not be concluded on the same day, the proper memorandum shall be made regarding what has been inspected, which shall be signed by the Inspector, the Register, and the Secretary.

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ART. 314. No matter what informalities and defects may be observed by the Inspector, they shall be stated in the report without making any formal charges or remarks to the Register, but without prejudice to requiring the latter to make the necessary explanations to elucidate the facts reported.

ART. 315. If after the report of the inspection has been closed the Register disputes any of the statements made therein, he shall write his reasons with his own hand immediately following the report, signing at the foot.

ART. 316. All those who subscribe the report shall be responsible, in accordance with the laws, for the correctness of the statements made therein, of those affirmed, as well as of those denied.

ART. 317. The President of the Audiencia shall examine the report, and should he observe any difficulties or irregularities caused in some Registry by legislation in force, on account of the circumstances existing in different localities, he shall submit a detailed statement thereof to the Division, so that the latter may propose the proper amendments to the Government.

ART. 318. The Inspector shall make an inspection and an examination of the books of the Registry in accordance with the following rules:

First. He shall demand the report made of the last inspection, whether it was ordinary or extraordinary, and shall enter the order and decrees issued by virtue of said inspection, or the part thereof which has been complied with.

Second. He shall examine all the entries in the Day Book included in the period to be covered by the inspection; and without prejudice to entering in the report any defects and informalities he may observe, he must necessarily enter the dates of each one of the entries made during the past six months and those of the corresponding marginal notes.

Third. After the examination of the Day Book has been concluded he shall proceed with the examination of the records made by virtue of said entries of presentation in chronological order, and shall include in the report any omissions, defects, and irregularities he may observe in their external form, as well as in their matter, as prescribed by Article 345 of the law and 311 of these Regulations.

Fourth. Besides these details and those ordered in each case by the Division, the Inspector must include in the report the following facts:

1. Whether the book fulfills the conditions established by Title 6 of the law, and of these Regulations.

2. Whether the numeration of the estates is correlative for all those of one municipality or section; or if it is special for each volume of those composing a municipal district.

3. Whether the records and notices relating to one estate have a special numeration.

4. Whether there are any intervals or blank spaces in the records.

5. Whether in all records regarding instruments or contracts for which the tax on property rights or transfer of property is to be collected, the Register has stated the amount collected or that the tax was not collected.

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6. Whether in all records where it is proper, the amount collected for fees is stated, or whether any records exist which do not contain said statement.

ART. 319. Besides the foregoing facts, one or more different entries referring to each one of the following kinds shall be copied in the report literally, with their corresponding marginal notes:

First. Transfer of ownership of several estates situated within one municipal district and included in one instrument.

Second. Award of estates to different persons *pro indiviso*.

Third. Entry of possession of an estate with the entry immediately following.

Fourth. Sale ordered by the State with the entry of possession which precedes it, and that of the mortgage which in a proper case follows it.

Fifth. Acquisition of property by virtue of a will.

Sixth. Acquisition of property *ab intestato*.

Seventh. Acquisition by virtue of specific legacies.

Eighth. Creation of voluntary mortgages on different estates.

Ninth. Creation of annuities (censos).

Tenth. Imposition of servitudes.

Eleventh. Cancellation of a voluntary mortgage.

Twelfth. Redemption of annuities granted by private parties.

Thirteenth. Cancellation of a legal mortgage by reason of guardianship.

Fourteenth. Notice on account of a lack of indices.

Fifteenth. Suspension of an entry of a writ of attachment.

Sixteenth. Cancellation of a property right recorded in the old Contaduría, Anotaduría, or Receptoría.

The Inspector shall see, in so far as is practicable, that the entries of which, according to the foregoing article, a literal copy is to be made, contain some special circumstance; and if in the period which the inspection is to cover, there should not be all the kinds of records enumerated in the foregoing paragraph, a special statement of those which do not exist shall be made in the report.

ART. 320. After the examination of the books of the Registry of property has been concluded, the Inspector shall request the Register to state whether he has any provisional books in his possession, stating in the report the answer of the latter, and in an affirmative case, the date of the closing memoranda and comparison. The following shall also be stated:

First. The date of the closing memoranda made in the books of the suppressed Contaduría, Anotaduría, or Receptoría of mortgages.

Second. The number of years covered by the Registry of the old Contaduría, Anotaduría, or Receptoría of mortgages, stating the books and packages of which it consisted, the state of their preservation, and the date of their closing memoranda.

ART. 321. The Inspector shall examine—

First. The indices of the old Contaduría, Anotaduría, or Receptoría of mortgages, as well as those of the new Registry; he shall verify some of the data they contain, referring to the proper records or entries; he shall state whether they are kept by years or municipalities, and he shall make a literal copy in the report of the headings of the columns of the different indices existing in the Registry.

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Second. The *book of incapacitated persons*, stating the headings it contains and the last entry made therein, with the record of the Registry to which it refers.

Third. The *book of receipts*, of which he shall verify some of the entries it contains, by the proper records in the Registry.

Fourth. The *inventory* of the books and documents of the office, And,

Fifth. The packages of documents on file, stating in every case the number of documents contained in each package.

ART. 322. The Inspector shall state in the report the system followed by the Register in the record of documents, in certifying as to the freedom from encumbrances, or to the encumbrances of estates, and in the preparation of statistics, the number of assistants and their salaries, and the general condition of the office.

ART. 323. If, during the inspection the official making the same is informed, verbally or in writing, of some errors, informalities, or frauds committed in the office, the Inspector shall examine the books of the Registry for the purpose of stating in the report what may be proper with reference to the acts complained of.

ART. 324. Registers may demand and file a copy of the report of the inspection, verified and certified to by the Secretary taking part therein.

ART. 325. The President of the proper Audiencia shall examine the reports of the inspection, and shall return those which have not been prepared in the manner prescribed in the foregoing articles, so that they may be redrawn. When any errors or irregularities appear in some Registry, he shall issue the orders he may consider expedient to repair and correct them, without prejudice to any action which may be proper against the Register. These reports shall be kept in the files of the Audiencia.

ART. 326. The report which said President must transmit every six months to the Colonial Department, shall contain all the details mentioned for reports of inspection with regard to all the Registries under his jurisdiction. At the same time he shall state any information he may have obtained with respect to the public and private conduct of Registers, and regarding the zeal and capacity they show in the discharge of their duties.

The Registry and Notarial Division, in view of said half-yearly reports, shall decide what may be proper, and enter what appears therefrom in the records of service and personal records of each Register.

ART. 327. A Register who is cautioned in the report of the inspection to correct some record, or remedy some error in form, shall communicate to the President of the Audiencia, in writing, that it has been done, as soon as he has done so, unless, considering the order of the Delegate improper, he makes the respective protest to said authority.

This fact shall also appear in the report of the inspection succeeding that in which said error was noted.

ART. 328. Any person who should have knowledge of some defect, informality, or fraud committed in some Registry, may inform the President of the proper Audiencia thereof either verbally or in writing. The President, in view thereof, shall issue any orders he

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may consider proper to ascertain the facts of the case, if he considers the complaint pertinent.

ART. 329. Whenever the President of an Audiencia is advised of any defects, informality, or abuse committed in some Registry of his district, he shall order an extraordinary inspection thereof to be made immediately.

ART. 330. The consultations by Registers with Judges of First Instance and with Presidents of Audiencias, shall always be made in writing, being limited, in accordance with the provisions contained in Article 276 of the law, to any doubts they may have as to the interpretation and execution of said law, and of the regulations enacted for its application.

Doubts and questions which refer to the determination of the legality of documents by virtue of which a record is demanded, or of the capacity of the parties thereto, must be decided by the Registers themselves, under their responsibility, in accordance with Article 18 of said law.

ART. 331. If Judges of First Instance themselves decide any questions which, in accordance with the first part of the foregoing article, are submitted to them, they shall communicate the questions submitted to them and their decision to the President of the Audiencia, without carrying the latter into effect.

If the President of the Audiencia approves them, he shall so inform the Judge of First Instance, so that they may be carried out; if he disapproves them, he shall issue an order to this effect, but without executing it, submitting the same to the Colonial Department for a final decision.

In cases of doubt the provisions contained in Article 276 of the law shall be observed.

Presidents of Audiencias shall proceed in a similar manner when questions are submitted to them directly by Registers, and they are in doubt as to their decision.

Decisions of Judges of First Instance and of Presidents of Audiencias shall always state their reasons; to the questions they shall accompany their opinion and report.

ART. 332. Presidents of Audiencias shall submit a report to the Registry and Notarial Division of all questions decided by them with reference to the interpretation and application of the Mortgage Law and its Regulations, and of those in which they approve the decision of Judges, for which purpose the latter must give them proper information.

ART. 333. The provisions contained in Article 330 of these Regulations, and in Article 276 of the law, regarding the option of Registers to submit any doubts they may have to the President of the Audiencia or the Judge of First Instance, shall be construed as meaning when the former shall reside in the town of Registry, the question otherwise being submitted to the Delegate.

TITLE IX.—PUBLICITY OF REGISTRIES.

ART. 334. The exhibition of the Registry ordered by Article 280 of the law shall be made at the verbal request of the person interested in consulting it, provided he clearly states the estate or property rights whose status he desires to ascertain.

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ART. 335. The books of the Registry shall not be exhibited to the persons who request it, except during the time they are not required by the Register for the service of the office.

Persons interested to whom the exhibition of books is refused, may apply to the Delegate, and the latter, after hearing the Register, shall order what may be proper.

ART. 336. Private persons who consult the Registry may take therefrom any notes they may consider necessary for their own use, but without copying the entries or requesting any assistance from the office whatsoever except the exhibition of the books.

ART. 337. Certificates of entries of all classes relating to definite property shall include all the records of ownership entered in the respective period, and all records and marginal notes of property rights to said estates within said period, which are not canceled.

ART. 338. Certificates of entries of a specific kind shall include all those of the same kind which are not canceled, stating that no others of the same kind are in existence.

ART. 339. Certificates of records of mortgages against certain persons shall include all those created and not canceled, on all the property whose ownership is recorded in favor of said persons.

ART. 340. In the certificates treated of in the three foregoing articles, and in those the object of which is to show that no entries of a certain kind exist, those canceled shall only be mentioned when the Judge or Court, or the persons interested, request it, and in the case prescribed in Article 292 of the law.

ART. 341. Mandates issued by ordinary Judges and Judge-Advocates who, in accordance with law, take cognizance of criminal causes which are tried before military courts, and requests for the issue of certificates, as soon as complied with, shall be returned to the Judges or Courts, or to the interested persons, as may be proper.

ART. 342. The requests and certificates shall be written on the proper stamped paper, in accordance with the rules prescribed for these matters.

ART. 343. In all cases in which, in accordance with the law, the persons interested in the records may complain of the Register to the President of an Audiencia or to a Delegate, it shall be understood that they have this option only when the President resides in the same town, and not when he resides in a town different from that in which the Registry is situated.

ART. 344. When the petition of the persons interested, or the mandates of the Judges or Courts, do not state with sufficient clearness and precision the kind of certificates demanded, or the property, persons, or periods which the latter are to cover, the Register shall return the petitions with a memorandum in the margin stating the data he considers necessary, and the mandates, with a communication requesting said data of the Judge or Court.

The Register shall proceed in a similar manner whenever he is in doubt as to the property or records the certificate must refer to, notwithstanding that the mandates or petitions have been drafted with due clearness, if, on account of any unforeseen circumstance, error or confusion is feared.

Authorities and public officials who require any certificate shall apply to the Judge of the subdistrict, who shall issue a mandate ordering the Register to prepare it without charging any fees there-

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for, if, the question having been examined by said Judge, he believes that it affects the public service in a direct manner.

ART. 345. If it is not stated in the petition or mandate whether the certificate is to be literal or in abstract, a literal certificate shall be issued.

ART. 346. Whenever any entry of presentation must be inserted in a certificate, because the instrument to which it refers is awaiting record, it shall be copied literally, no matter how the rest of the certificate is drawn.

ART. 347. Whenever any entry which must be inserted in a certificate has been corrected by another entry, both shall be literally inserted, fees being collected only for the entry in force.

ART. 348. Certificates shall be drafted in accordance with the proper models which accompany these Regulations, with the necessary details, according to the kind and circumstances of the records therein included.

ART. 349. Although the records which are to be certified to, refer to different estates or persons, they shall all be inserted in one certificate, unless the person interested requests that separate certificates thereof be given him.

ART. 350. Registers of property can not issue certificates of records in which they, their wives, or relatives within the fourth degree of consanguinity or the second degree of affinity, are interested. In such cases the representative of the Department of Public Prosecution shall issue the certificate under his responsibility, or, in his absence, a lawyer of the subdistrict, who has attained his majority, to whom the Register shall forward the petition, they receiving the proper fees in accordance with the Schedule.

TITLE X.—APPOINTMENT, QUALIFICATIONS, AND DUTIES OF REGISTERS.

ART. 351. Registers shall have the character of public officials for all legal purposes, but subject to the provisions of these Regulations.

The office of Register is compatible with the practice of law.[a]

ART. 352. Registers shall be treated as "Excellencies" within their offices and in public instruments, in which they shall occupy the place immediately below that of the Court of First Instance. They shall use as an insignia on formal occasions an octagonal medal of silver of the same dimensions as those used by Judges of First Instance, bearing the Royal Crown and hanging from the neck by an emerald-green silk ribbon. On the obverse it shall bear the Royal Coat of Arms; on the reverse an open book surrounded by a ribbon forming a bow, besides the following inscriptions: *Prior tempore potior jure;* on the bow, *Register of property*, and on the lower part, *February eighteenth, eighteen hundred and sixty-one.* On informal occasions they may also wear their insignia on the lapel of their dress coat, the medal being reduced to a fourth part of its usual dimensions and hanging to a green silk cord, like the ribbon, with a white thread at the edges.

ART. 353. Registers to be retired with pension at their own request when they reach the age of 65 years must apply to the Government

[a] See Official Gazette Porto Rico, No. 23, Jan. 27, 1899, as to incompatibilities.

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through the President of the proper Audiencia and the Registry and Notarial Division, by means of a petition ratified before the Judge of First Instance of the subdistrict, and accompanying therewith a certificate of baptism or of birth.

ART. 354. A Register who desires to be retired with pension on account of physical disability must address his petition to the President of the Audiencia, accompanied by a physician's certificate.

In view thereof, the President shall order the Delegate to have an investigation made by the Court and two more physicians.

After the investigation has been concluded, the person who made it must take an oath before the inferior Court, stating in due form:

First. With what disease the Register is afflicted.

Second. If it is of such a nature as to disqualify him from discharging his duties.

Third. If, in their opinion, the disability is permanent.

In view of this declaration the Delegate shall forward the proceedings to the President of the Audiencia, who shall transmit them with his report to the Division, which, taking into consideration the proofs submitted, shall propose that the retirement with pension be granted, or not, and the Government shall order what it may consider proper.

The Division and Presidents of Audiencias may officially order that proceedings be instituted for the retirement of Registers when there is reason to suppose that they are incapacitated, observing the rules established in the preceding paragraphs.

ART. 355. Petitions for retirement with pension, of officials of the Division, and those for pensions due them or due Registers and their respective families, shall be treated in the manner prescribed by general legislation for pensions.

ART. 356. Registers who desire to be placed on the suspension list shall forward their requests through the Presidents of Audiencias to the Registry and Notarial Division, stating for what period they desire it and the reasons therefor, being permitted to inclose the papers they may consider proper. The Division shall forward the petition to the Secretary with their report.

For the granting of these requests, the proportion and preference fixed respectively in the second and third paragraphs of Article 395 shall be taken into consideration. The retention on the suspension list shall be obligatory for the period requested, which can not be reduced nor extended in any case. After the period of the suspension has elapsed the appointment shall be made in the manner prescribed by Article 389.

Registers who have been on the suspension list can not again be placed thereon until four years have elapsed since their return to service. Such Registers shall not be included during the time of their suspension in the rolls of the Corps for the purposes of Article 365.

This article shall be applicable to the officials of the Division, with the following modifications: The petition shall be addressed to the Secretary, through the Division; for the purpose of simultaneousness and preference two separate groups shall be formed—the first by the Chief, officials, and clerks, and the second by the copyists; although the former figure on the rolls of the Division for the effects of Article 268 of the law, they shall not be included in the rolls of Registers for the purposes of the provisions contained in Article 365 of these Regulations.

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ART. 357. Registers of property who desire to exchange their places with each other must address their requests to the Government through the President of the proper Audiencia.

To permit exchanges, the existence of the following circumstances shall be necessary:

First. That the persons who desire the exchange are in possession of Registries of the same class.

Second. That they are not relatives within the fourth civil degree of consanguinity or legitimate affinity in a direct or collateral line, a fact they shall state under their responsibility in their petitions.

Third. That good reasons for the exchange exist, and that they are shown.

If the foregoing circumstances obtain, the Division shall forward the papers in the case, with its report, to the Colonial Secretary for a definite decision.

The Government may agree to an exchange between Registers of different classes when extraordinary reasons therefor exist, and after hearing the proper Division of the Council of State, whose report shall be published in the Gaceta, together with the Royal Decree granting the exchange.

ART. 358. Registers of property of the Colonies and those of the Peninsula having been placed on the same basis by the Royal Decrees of June 27, 1879, and November 17, 1890, any exchange requested must be made in accordance with the following rules:

First. Registers of the Peninsula and of the Colonies who desire to exchange with each other shall request said exchange both of the Department of Grace and Justice and of the Colonial Department, in a petition signed by both persons interested, through the proper superior offices, which, after coming to a decision as to the advisability of the exchange with regard to the Register under their several jurisdictions, shall forward the papers in the case, with their report, to the proper Secretary for a definite decision.

Second. To grant an exchange between Registers of property of the Peninsula with those of the Colonies the circumstances must be present which are required by the rules in force in the Peninsula regarding exchanges between its Registers and the rules established by Article 297 of the law and 357 of these Regulations.

Third. When an exchange between Registers of different classes is under consideration, the Sections of the Council of State which report on the questions to the respective Departments, shall be heard.

Fourth. Exchanges shall be ineffective if either of the Registers does not take possession of his office within the period provided by the Regulations.

ART. 359. As soon as a Delegate receives notice of the vacancy of a Registry, or the suspension of a Register, he shall order that the representative of the Department of Public Prosecution in the subdistrict take temporary charge of the office, and in his absence or inability that his substitute take charge.

In towns where there is more than one inferior Court of First Instance, the Delegate shall place the Registry in charge of such representative of the Department of Public Prosecution as he may consider proper.

The representatives of the Department of Public Prosecution and the substitutes shall not be required in such cases to give bond.

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After the representative of the Department of Public Prosecution or his substitute has taken charge of the office, the Delegate shall make an extraordinary inspection, citing the Register, should there be one, or otherwise his heirs or the persons representing them, in accordance with the provisions contained in Article 312; he shall begin by entering the facts mentioned in Articles 320 and 321, so that after the proper report has been made it may be turned over to the temporary incumbent, without prejudice to continuing the inspection in the manner prescribed in Articles 318, 319, and 322.

ART. 360. Presidents of Audiencias shall appoint temporary Registers as soon as any vacancies occur, or when they order the suspension of Registers, or when the temporary Register previously appointed dies or resigns his office. They shall immediately report these appointments to the Division, which may confirm them or make others. In all cases where the reasons for the temporary appointment are known by the Division before the Presidents of Audiencias have knowledge thereof, the former may at once make the proper appointments.

Temporary appointments shall be given, whenever it is possible, to persons who possess the conditions of fitness mentioned in Article 298 of the law, and when it does not appear that they are included in any of the cases mentioned in Article 299; but they can not be given to persons who are not lawyers.

Registers of property, who by force majeure are prevented from exercising their respective duties, and those who have already served as temporary Registers, shall be preferred for the provisional charge of Registries.

If the person temporarily appointed by the Division is in the Peninsula, he shall embark for his destination by the first official steamer.

ART. 361. When the vacancy in the Registry is caused by the death of the Register in charge, the Delegate shall advise the President of the Audiencia thereof, forwarding a list of the lawyers of the subdistrict who may be appointed temporary Registers.

ART. 362. Presidents of Audiencias in advising their Delegates of the appointment of temporary Registers shall order that, after they have taken the proper oath, they be given immediate possession, in accordance with the provisions of Article 359, and he shall designate the public institution in which the fourth part of their fees shall be deposited, if they have not previously given bond to the satisfaction of said President.

ART. 363. Presidents of Audiencias shall order the suspension of temporary Registers when there is sufficient reason therefor; of these orders, as well as of vacancies, they shall advise the Division by the first mail, which may confirm said suspensions, officially order them, in a proper case, as of their own motion, and order the removal of temporary Registers, when, in proceedings instituted for the purpose, some offense in the discharge of their duties or in their public or private conduct is proven; the decision of the Division in all these cases shall not be appealable.

ART. 364. For filling vacancies in the office of Registers of property, in accordance with Article 303 of the law, when they are once before the Colonial Department, the proceedings shall be instituted by the Registry and Notarial Division for each vacancy. If the vacancy is to be filled by promotion, an announcement shall be published in the

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Gaceta de Madrid, the period of four months being fixed for the filing of applications, which shall be addressed to the Secretary, through the Division, by the applicants or their representatives.

This period shall begin to run for the applicants of the Peninsula, as well as for those of the Colonies, from the day following the publication of the announcement.

If the vacancy is to be filled by competition, the call for the examination shall be published in the official newspaper of the place in which it is to be held.

When several vacant Registries are announced, the applicants may include them all in one petition, briefly stating the ones they request and their order of preference, in a proper case.

The order for the announcement of filling of vacancies in either manner shall be issued within fifteen days from the time they are known in the Department.

ART. 365. A book shall be kept in the Division for the purpose of entering therein the order of succession to which any vacancies occurring correspond, a special degree of succession being opened for Registries of each class.

To determine the order of succession to which each class belongs the date on which the Division received official notice of the vacancy shall be taken into consideration.

If official notice of two or more vacancies in the same class is received on the same day, the order of succession corresponding to each one shall be fixed by the date on which they occurred, and if they were simultaneous they shall be determined by the Division.

Vacancies in Registries shall be filled in accordance with the following rules:

First. For a Registry to be filled first in order of succession, the Register shall be appointed from among the applicants who are in the highest class, and if there are several of the same class, the one who has rendered the longest service therein, taking into consideration the limitations mentioned in the first and third rules of Article 303 of the law.

To compute the length of service in the class, the period previously served in the same or in a higher class by a person who, after having descended, returns to the same, shall be taken into consideration, in a proper case.

When two or more Registers who make application have a right to the appointment, being of the same class and having served an equal period therein, the one who has been in the Corps the longest period shall be appointed, and if their length of service in the Corps is equal the Government may select the one it may consider proper.

Second. For a Registry which must be filled second in order of succession, the Register from among the applicants who has served the longest period in the Corps and is not included in rule number 3 of Article 303 of the law, shall be appointed.

Third. When the Registry must be filled third in order of succession, the Division taking into consideration the circumstances of the Registers making application and observing the provisions contained in rules 2 and 3 of Article 303 of the law, shall prepare the proper list and shall forward it to the Government, so that it may select that one of them who is to be appointed.

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The Colonial Department shall publish in the month of January of each year two rolls of the Corps of Registers, one in order of service in the classes and the other in order of service in the Corps.

For the purpose of this Article the Chief of the officials of the Division shall be classed as Registers of the first class; the first and second Assistant as Registers of the econd class, and the third Assistant as a Register of the third class.

When the officials of the Division apply together, if they should have a right of preference over the other applicants of the class of Registers, the order corresponding to them in accordance with their special graded rolls, shall be observed.

The Department of Grace and Justice shall give information in regard to the length of service and class of the applicants from the Peninsula.

ART. 366. The competitive examinations for Registries of property, in the case mentioned in Article 303 of the law, shall be subject to the following rules:

1. The call shall be made by the Registry and Notarial Division of the Colonial Department, or by the President of the proper Audiencias, as soon as, the vacancy having occurred, said Division has decided in what order of succession it is to be filled, and it shall be published in the proper official Gazette.

2. The Board of Examiners, when the examinations are to be held in Madrid, shall consist of:

The Chief of the Registry and Notarial Division of the Colonial Department, or the person discharging his duties, who shall be the President; one Professor of Law; one Register of property; one lawyer and one official of the Division, who shall act as Secretary, all of them being appointed in accordance with a Royal order, by the Colonial Secretary, for each examination held.

The Board of Examiners, when the examinations are to be held in the Colonies, shall be composed of:

The President of the Audiencia, or, in his stead, the President of the Chamber, who shall preside; the prosecuting attorney of the Audiencia, or, in his place, the assistant prosecuting attorney; an attorney of the bar of the capital, appointed by the President of the Audiencia; the Dean of the Notarial College, or the Notary who substitutes him, and a Register of property of the Colony, to be appointed by the President, who shall act as Secretary.

The appointments of the members to constitute the Board shall be published in the proper official Gacetas.

The office of a member of the Board in question shall be honorary and without pay.

3. The first examination shall consist in answering twelve questions, drawn by lot and relating to the following subjects: Four to Mortgage Legislation; three to Civil Law; one to Notarial Law; one to Commercial Law; one to Administrative Law; one to legislation regarding the tax on transfers of property and property rights, and one to judicial proceedings.

The second examination shall consist of preparing an essay on a subject drawn by lot from among 85 contained in a bag, relating to Mortgage Legislation, Notarial Legislation, Civil Law, and Commercial Law.

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The practical examination shall consist of doing all the work required to record a document, or to refuse to record it, or to suspend an entry.

4. For each competition the Division shall publish the proper list of three hundred questions for the first examination and of 85 subjects for the second, and shall take care to forward the same in due time to the proper authorities.

5. For the third examination, one of the competitors shall select a number from among ten, relating to the same number of practical cases; and, in view of the facts, of which a copy shall be given each one of the competitors, they shall execute, within the period of eight hours and under the surveillance of the Board, the proper work of the Registry until the return of the document, delivering their work to the person designated by the Board, who shall seal each set of papers in the manner prescribed in rule 13 of Article 307 of these Regulations. The competitors may make use of books. On the day fixed by the Board the competitors shall read their own work in public.

6. The Board shall propose for the vacant places the competitors who have obtained the first numbers, so that the place requested in the first place by the person interested shall correspond to number 1, the following one to number 2, and so on.

7. The following rules of Article 307 shall be applicable for these examinations, which, together with those contained in the present one, shall be published in each call, viz, 2, 3, 5, 10, 11, 12, 13, 15, 16, 17, 18, 21, 22, and 23, it being understood that in rule 2, when the examinations take place in the Colonies, the President of the Audiencia shall be substituted for the Division, and the Gaceta of the proper Province for the "Gaceta de Madrid;" that in rule 3 Presidents of Audiencias shall take the place, in a proper case, of the Chief of the Division; that in rule 12 rule number 6 cited therein, is rule number 3 of the present Article, and that in rule 22 four members of the Board are required to be present to hold sessions instead of five.

ART. 367. Appointments of Registers of property, by promotion or through competitive examinations, shall be made within the month following the termination of the competitive examination, or after the recommendation of the Board has been submitted.

All appointments of Registers by virtue of competitive examinations, transfers, or exchanges must be published in the Gacetas of Madrid and of the proper Colony.

ART. 368. Registers who request their transfer to other Registries, either by promotion or exchange, shall acquire from the time of their appointments the class of the Registry they obtain, and shall lose that of the Registry they are leaving, for the effects of Article 303 of the law. After the new appointment has been officially communicated, and after an order from the Delegate, they must leave their duties in the Registry, and the representative of the Department of Public Prosecution shall take charge thereof in the manner prescribed in Article 359, the Register being obliged, however, to remain in the same town to assist in the extraordinary inspection, until the facts mentioned in Articles 320 and 321 have been entered.

After the appointment of a Register of property has been made, the person interested shall receive the proper certificate, if he enters

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the Corps or ascends a class. Those who, having descended a class, return to the same, shall require a new certificate.

ART. 369. If the person interested is in Europe he shall be allowed sixty days from the date of his appointment to take passage for his destination. If he is in any of the Colonies he shall be allowed the same period to embark, computed from the date of the approval of the Governor-General of the order containing the new appointment, being permitted to remain in Europe thirty days, in the latter case, after his arrival.

The Register elect must forward to the Registry and Notarial Division all certificates of departures and arrivals at his destination, and give an account of his residence in Europe during his stay there.

Registers elect, who are in the Peninsula or in the Colonies, shall have a right to an official passage, as an advance from the State, should they so desire; but in such case they shall reimburse the amount thereof by paying 15 per cent of the income of the Registry. The proper Treasury authorities of the Colonies shall see that the foregoing provisions are complied with.

ART. 370. In order to take possession, and after the proper bond has been approved, they shall be allowed the period of thirty days from the date of their arrival in the Colony of their destination.

Said period may be extended by the President of the Audiencia for good reasons, duly proven.

ART. 371. The bond may be given in money, public securities, or in estates.

The shares of the public debt, or any other which by special or general provisions of the Government are admitted to guarantee obligations in favor of the State, shall be considered as public securities.

Public securities offered as bond shall only be admitted for the highest published price they may have reached, according to the latest official quotation known on the day the deposit is made.

ART. 372. The bond consisting of public securities may be deposited in the General Depository as an obligatory deposit, with the following statement:

Bond furnished by N. as security for his administration as Register of property of ———, of the district of the Audiencia of ———, at the disposal of the President of the same.

The bond consisting of cash shall be deposited in said institution, or in the one designated by the Government for such cases, in the capital of the respective Colonies.

ART. 373. The bond consisting of estates shall be constituted by a mortgage in the manner prescribed by Articles 127 of the law and 66 of these Regulations, which shall be created by the owner of the property for the amount fixed for the Registry, and 50 per cent more for costs and expenses, in a proper case, stating that it remains at the disposal of the President of the proper Audiencia, as security for the faithful discharge of his office by the Register elect.

After the mortgage has been executed it shall be presented in the Registry of property for record, if proper.

ART. 374. After the bond has been constituted in cash or public securities the Register elect shall present to the President of the proper Audiencia the certificate of his appointment, the receipt for the deposit, and, in a proper case, the latest official quotations of the Exchange.

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If the bond has been given in property the Register elect shall present the mortgage with the proper certificate, also a detailed certificate of the incumbrances dated subsequent to the record of the former, and another certificate issued by the Treasury of the Colony, stating the income of the mortgaged property, which may have been calculated during the last five years in the assessment made for the land tax.

The President of the Audiencia, taking into consideration the amount of the bond fixed for the Registry, shall examine the respective documents, and shall issue a decree either approving or admitting it, or declaring that this can not be done, stating in the latter case the defects contained.

The receipt for the deposit shall be returned to the person interested, a certified copy thereof remaining in the office of the Audiencia.

In order to permit the approval of the mortgage bond, it shall be necessary that the annual rental of the property, capitalized at 4 per cent according to the certificate of the Treasury Department, its selling value shall exceed double the amount of all the incumbrances thereon, including that of the new bond.

The decision issued by the President of the Audiencia shall be communicated to the person interested on the day following its date. If it is not favorable to the admission of the bond, the Register elect may appeal to the Division, correct the defect contained in said bond, or constitute another, within the period prudently fixed by the President of the Audiencia.

In case of an appeal, the President of the Audiencia shall forward all the papers in the case, with his report, to the Division for the proper action.

If their decision is confirmatory, the person interested must correct the defect or constitute a new bond within the period fixed by the Division.

ART. 375. The Register elect, who prefers to make use of the privilege allowed him by Article 305 of the law, shall apply to the President of the Audiencia, presenting his proper certificate and requesting that the public institution be designated in which the fourth part of his fees shall be deposited.

The President of the Audiencia shall issue the proper order, so that these deposits may be admitted as obligatory and as a bond to answer for the faithful discharge of their duties.

ART. 376. Registers shall make said deposits in the manner and at the times they may consider convenient, provided, that at the quarterly inspection they present a receipt for the fourth part of all the fees collected from the time of the last visit until five days before the actual one.

In the report of ordinary inspections, an express statement of this fact shall be made.

As soon as the part of the fees deposited by the Register is sufficient to cover the amount fixed for the bond of his office, said bond shall be constituted with this amount in the ordinary manner, and the obligation to make further deposits shall cease.

ART. 377. Registers of property may at any time exchange their respective bonds for any of those mentioned in Article 371, for which purpose they shall request it of the President of the proper Audiencia, who shall not issue the order for the return or cancellation, in a proper

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case, until he has previously approved the one newly constituted, in accordance with the provisions contained in the present title.

ART. 378. The bond furnished for one Registry shall serve for any other the person interested may obtain, without prejudice to the increase necessary therein, if the Registry he is to take charge of requires a higher bond.

ART. 379. After the bond has been approved, or the public institution in which the fourth part of the fees is to be deposited is designated, the President of the Audiencia shall order that the certificate of the Register elect be approved and that, after the proper oath, he be given possession by the Delegate, for which purpose he shall issue the proper order.

ART. 380. Registers shall, before the proper Delegate, take an oath of allegiance to the King, and for the fulfillment of all the obligations imposed upon them by law.

After the oath has been once taken, it shall not be necessary to take another for the purpose of taking possession of other Registries.

ART. 381. The Delegate, by virtue of a letter containing the order from the President, and before taking the oath, in a proper case, shall install the Register appointed, requiring that the books and papers of the Registry be delivered to him according to the inventory, in his presence and before the proper Clerk or Secretary, making a memorandum of the delivery.

The original of this memorandum shall be sent to the President of the Audiencia, a certified copy remaining in the possession of the Register.

ART. 382. The Register elect, who, without just cause, duly proven, allows the periods fixed for his departure, to give bond, or to take possession, to elapse, shall be considered as having resigned, and shall lose the right acquired by his appointment.

ART. 383. The Division shall keep a record of each Register, in which, besides the facts regarding his appointment, there shall be stated—

First. The errors they commit and which appear in the report of the inspections, or in the communications of the Presidents of the proper Audiencias.

Second. The administrative or judicial actions instituted because of their conduct.

ART. 384. In order to obtain the return of the bond given by Registers of property, the person interested, or his heirs, must request the Judge of First Instance of the subdistrict in which he last served, to publish the request in the Gaceta de Madrid and in the official newspapers of the proper Colonial province, every six months for the period of three years; the Register must have ceased to discharge the duties of his office; persons who may have any claim to present shall be cited, so that, within the period mentioned, they may file them with the Judges of First Instance of the subdistricts in which the former may have served, for which purpose all said subdistricts shall be mentioned in the announcement.

After the period has elapsed without any claims having been presented, the proper certificate shall be prepared by the President of the Audiencia, and another by the Treasurer of the Province, stating that in addition there is no claim against the Register for any liability contracted in the discharge of his office.

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When the return is requested by a temporary Register it shall be announced every month for the period of six months, and after this period has elapsed the return shall be ordered, if it be proper.

A Register who has had charge of different Registries and requests the return of his bond shall prove that the latter is not subject to any liability, and that the period fixed in Article 306 of the law has elapsed, by means of certificates issued by the Judges of First Instance in whose subdistricts he has discharged his duties.

The return shall be made by virtue of an order issued by the President of the Audiencia.[a]

ART. 385. The removal of Registers shall legally take place when it is declared by a judicial judgment, or when a correctional or punitive penalty has been imposed; and it may be ordered by the Government when there is sufficient cause therefor.

ART. 386. The following shall be considered sufficient causes for the order of removal of Registers:

First. For having declared themselves or having been judicially declared in bankruptcy or assignment.

Second. For not being worthy of holding the position by reason of their depraved conduct, dishonorable behavior, or by reason of habitual negligence in the discharge of their duties.

Third. For being absent from the town in which the Registry is situated without the proper leave or permission; for seriously disobeying the orders of their superiors regarding the exercise of their duties, or for lack of proper hierarchical subordination.

Fourth. For having been disciplined three times in the capacity of Registers.

Fifth. For being debtors to the public funds as taxpayers.

Sixth. For not having paid the indemnity referred to in Article 323 of the law within the ten days following the notice of the final judgment contained in the sentence.

Seventh. For not having the indices of the Registry up to date.

Eighth. For ostensibly acting against the institutions governing the country.

ART. 387. The following are sufficient causes for the transfer of Registers:

First. For not being in good repute with the public.

Second. For taking part in politics of the district, excepting the exercise of the right of suffrage.

Third. Any other special and serious occurrences or important considerations of the public order.

ART. 388. When the Division, or the Presidents of the Audiencias, receive notice that some Register has given cause for his removal or transfer, they shall order the proper Delegate to institute proceedings, in which the local authorities and such persons as are considered proper by the President of the Audiencia shall be heard.

After the necessary evidence has been collected, the Delegate shall forward the same, with his report, to the President; and, should the latter consider that the charges against the Register are not well founded, he shall forward it to the Division.

If he considers removal, transfer, or discipline proper, he shall formulate the charges, and shall give a copy of the evidence to the

[a] See Official Gazette, Porto Rico, No. 65, March 17, 1899.

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person interested, so that within the period of eight days he may answer it and submit his proofs, which must be given to the Delegate, a reasonable period being fixed for this purpose. After proofs have been submitted the papers shall be returned to the President of the Audiencia, who shall forward them with his report to the Division, which shall propose the decision they may deem advisable.

Should it be unfavorable, the evidence shall be forwarded to the proper Sectión of the Council of State for consultation.

The Government, in view of all this, shall decide as it may deem proper.

In cases of transfer, the Register can not again, by way of promotion, return to the Registry from which he is removed.

In cases where the removal is legal, the Judges and Courts shall forward a certificate of the decision to the Division.

The President of the Audiencia shall report to the Division the decree ordering the proceedings, stating his reasons therefor.

ART. 389. After the transfer of a Register has been ordered it shall take place as soon as there is a vacancy in the same class which has not been announced.

The Register transferred does not rise a degree in classification for the effects of Article 365 of these Regulations.

If the Register transferred does not appear to give a bond or to take possession within the legal periods he shall be understood to have resigned, and shall be definitely dropped from the Corps of Registers.

ART. 390. From the decision rendered in the administrative proceedings for the removal or transfer of Registers or the removal of officials of the Division the persons interested may bring the proper administrative action for the hearing of disputes.

ART. 391. Registers shall not absent themselves without permission. Delegates may grant Registers leaves of absence for eight days.

Notwithstanding the provisions contained in the preceding paragraph, Registers of property are hereby authorized, when it is necessary, to absent themselves from the town of their residence for the purpose of depositing the amount collected by way of taxes on property rights and transfers of property, without leave or permission previously being obtained from any person whatsoever, but in such cases advising the Delegate, by means of a communication, of the day they are going to be absent, as well as of the reason therefor and leaving the substitute in charge of the Registry. In these absences said Registers can not spend more time than is reasonably necessary to execute their duty, and on the day of their return they shall advise the Delegate that, having performed their duty, they again take charge of their office. The Judges delegated shall report to the Division whenever Registers absent themselves by virtue of the authority granted them, as well as of the time of the absence and the reasons therefor.

In no case shall leaves of absence be granted if a substitute is not left in charge of the Registry.

Leaves of absence not taken advantage of within a month from the date on which they were granted shall be forfeited, counting from the date on which the persons interested receive notice thereof.

They shall also be forfeited when the substitute resigns his office, or when it is impossible for him to continue therein, and when there

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is no person to take charge of the office under the responsibility of the Register.

The Delegates shall report to the President of the proper Audiencia, and the latter to the Division, the date on which Registers make use of the leaves or permission granted them to absent themselves, and of the day on which they again take charge of the office, so as to enter the same on the proper personal records.

ART. 392. Registers may request leaves of absence in order to absent themselves from their duties in the Registry on account of sickness, or for any other serious cause which forces them to temporarily absent themselves from the town where they reside.

ART. 393. Requests for leaves of absence shall be addressed to the President of the Audiencia through the Judge of First Instance.

If a leave of absence is requested on account of sickness, a certificate of the physician shall be sent with the request, justifying the same.

ART. 394. The Judge in forwarding the request for leave of absence may make any observations he may consider proper regarding the reasons therefor, and whether the absence of the Register will affect the service. Before making this report, the Judge shall ascertain whether the substitute appointed can take the place of the Register.

ART. 395. The President of the Audiencia, should he deem it advisable, and in view of the report and information he may receive regarding the truth of the facts alleged, may grant a leave of absence not to exceed two months.

This leave of absence can not be extended, and may be enjoyed within or away from the respective Island once only during each year. It shall be computed from the date on which Registers turn over their offices to the substitute, and shall end after two months, at which time they must again have taken charge of the Registry. These leaves of absence can not be granted simultaneously to more than one-fourth of the number of the Registers belonging to the jurisdiction of each Audiencia, undividable fractions being considered in favor of the Registers.

To obtain leaves of absence in cases incompatible with the proportion prescribed in the foregoing paragraph, that official shall be preferred who has for the longest time been without leave of absence.

The Registry and Notarial Division may also grant the leaves of absence referred to in the foregoing article, in accordance with the provisions contained in the two preceding paragraphs.

ART. 396. Registers who have not had any leaves of absence for two years may the following year obtain a leave for four months, which can not be extended either within or without the Island. This leave may only be granted by the Colonial Secretary, or advanced by the Governor-General in cases of emergency, and with the requisites prescribed in the preceding article, except in the manner of computing the time thereof, if it is to be taken outside of the respective Island, in which case it shall begin on the date of departure from said Island and shall end on the day of the direct return to the same from the point to visit which the leave of absence had been requested.

Registers who have not had any leave of absence for three years may the following year be granted six months. Should they not have had any leaves of absence for six years, they may obtain eight months, and twelve months if they have not had any for ten years. All leaves

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of absence treated of in this paragraph can not be extended, and shall be granted by the Colonial Secretary or advanced by the Governor-General, in accordance with the rules contained in the preceding article, with the exception of the computation of time, it being understood that they begin on the day of the arrival at the point for which they were requested, if the trip is a direct one, and that they end on the date of their direct departure for their residence. In case the voyages are not direct, the leave of absence shall begin on the day of the departure from the respective Island, and when the leave ends the Registers must be found in charge of their offices.

Registers shall forward to the Registry and Notarial Division the certificates of departures and arrivals issued by the Captains of Ports, or Consuls of Spain, according to the case, of their trip to the point where they are to enjoy their leave, as well as of their return to their duties, so as to show the dates on which they begin and end their leaves of absence, being also required to give an account of their residence during the period of their leave.

ART. 397. The leave of absence granted a Register shall be invalid if, before making use thereof, or being on leave, he is transferred to another Registry, an order of ratification being necessary to allow him to use it or to continue enjoying it until its end, according to case. In all cases the date of departure from the point where the official happens to be shall be taken into consideration, to include it within the leave of absence, the latter not being ratified if said period is greater.

ART. 398. Any voluntary detention or interruption of the voyage on the return trip, after having made use of the leave of absence, shall be just cause for the removal proceedings of the Register interested; these proceedings shall also be instituted when, the leaves having expired, the Registers shall not have proven their departure for their destination. For no reason whatsoever shall the passage be advanced to Registers making use of their leaves of absence, no matter for what cause the leave is granted and to what point they are going.

Commissions for service outside the respective Island, and any form of authorization whatsoever, other than that established in the preceding articles, requested by Registers, to absent themselves from the point of their official residence, are prohibited.

ART. 399. Governors-General and Presidents of Audiencias, in a proper case, shall report to the Secretary or to the Division concerning the leaves of absence they advance or grant to Registers, stating the reasons therefor, as well as the ones they refuse, also stating the reasons for said refusal.

In the record of each Register, leaves of absence which are requested or granted shall be noted.

ART. 400. Any Spaniard, who is a layman, over 25 years of age, may be appointed the substitute of the Register, excepting Notaries and Court Clerks (Escribanos de Actuaciones).

ART. 401. Whenever a substitute is to take the place of a Register of property, the Delegate shall previously be advised thereof, stating whether the substitution is made on account of sickness or legitimate absence, the only reasons which can authorize it.

In case of the death or physical disability of the substitute who is legally in charge of the Registry, the representative of the Department of Public Prosecution shall immediately take charge of the office

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until the Register returns, appoints a new substitute, or the disability disappears.

ART. 402. A substitute who takes the place of a Register during his absence or sickness shall not be entitled to any other recompense than that which may have been agreed to with the Register and to be paid by him.

ART. 403. If, when a Register requests leave of absence, the substitute appointed is incapable of taking his place, the Judge shall state this fact in his report, and the President shall suspend his decision until he has approved the appointment of another substitute.

ART. 404. The provisions contained in Articles 80, 277, and 350 of these Regulations shall be applicable, even if on account of the absence or sickness of the Register the substitute is in charge of the Registry.

ART. 405. For the carrying out of the provisions contained in Article 310 of the law, Registers in making the tables required therein shall observe the following rules:

First. The statements shall include all the facts which appear in the instruments presented in the Registry during the year, whatever may be their date, provided they have been recorded during the same period. The documents awaiting record within the legal period for the previous year shall be included in the tables.

Second. Cautionary notices shall not be included in the tables.

Third. In recording in their proper places the fees of Registers, all those earned shall be entered, even if for any reason whatsoever they have not been collected. Therefore, not only shall those earned for the record or principal entry be included, but also all those occasioned by the document, such as the entry of presentation, marginal notes, memoranda at the foot of the instruments, etc.

Fourth. The absence of any of the facts required by the tables, as well as any particular point relating to the statistical service, shall be concisely and clearly stated, by means of a memorandum, for the purpose of its decision and the effects resulting therefrom.

Fifth. At the foot of each table the date of its compilation shall appear, the Register shall affix his full signature thereto, and it shall be stamped with the stamp of the office. Registers shall also take into consideration the observations referring to each of the tables which appear at the foot of the respective forms.

There shall be made in the personal record of the Register to whom it refers a memorandum of all favorable or unfavorable mention to which the statistical service may give rise.

TITLE XI.—RESPONSIBILITY OF REGISTERS.

ART. 406. Registers shall be subject to disciplinary jurisdiction in the manner prescribed by these Regulations.

ART. 407. The disciplinary jurisdiction over Registers of property shall be exercised—

By the Presidents of Audiencias.

By the Colonial Secretary, in accordance with a report from the Division.

ART. 408. Registers of property shall be disciplined—

First. When, by word, letter, or act, they show disrespect to their hierarchical superiors, Delegates being such for this purpose, whether

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they are Judges of First Instance or Municipal Judges, Inspectors, Presidents of Audiencias, or the Registry and Notarial Division.

Second. When they are tardy or negligent in the fulfillment of their official duties.

Third. When they are guilty of a breach of decorum within or without the office.

Fourth. When their moral conduct or their vices lower them in the esteem of the public, and the Government does not make use of the privilege granted by Article 308 of the law.

Fifth. When, in performing the work of the Registry, they infringe upon the legal provisions, and the Government does not make use of said privilege.

ART. 409. The correction of Registers of property may be requested—

By private persons even when they are not directly injured.

By Delegates.

By Presidents of Audiencias.

By the Division.

ART. 410. The proceedings for the purpose of imposing a correction shall be in accordance with the following rules:

First. Private persons shall file their complaint with the proper delegated Judge, accompanying therewith the documents on which it is based, or stating the proof they may consider proper, which must be made within the period of eight days. The Delegate shall submit everything to the Register, so that within the period of three days he may answer in writing and submit, should he desire to do so, proofs to the contrary, which must also be investigated within the period of eight days; and on the day following he shall forward the papers in the case, with his report, to the President of the Audiencia, who may require new facts if he considers it necessary, and in view of everything shall declare that there is no cause for the correction, or shall impose the correction he may deem proper, in accordance with the provisions contained in Article 415. From the resolution of the President of the Audiencia an appeal lies to the Secretary, who shall decide after hearing the Division. This decision shall be final.

Second. A similar procedure shall be observed when the correction is officially requested by Delegates or Presidents of Audiencias.

ART. 411. The Secretary, at the instance of the Division, may discipline Registers of property, without first instituting proceedings, by a warning, reprimand, or fine, when they are guilty of insubordination or disrespect to the Division or to the orders from the same.

In the case of No. 4 of Article 408, the Division must transmit the facts to the Delegate, through the President of the Audiencia.

The Delegate shall institute the proceedings in the manner prescribed in the foregoing article, with the only difference of forwarding the papers with his report to the Division through the same channel, so that it may propose what is proper.

ART. 412. The period within which to enter an appeal against the decree of the President of the Audiencia shall be one month, computed from the day following the one on which the imposition of the correction is communicated.

The appeal shall not be admitted if it is not first shown that the fine imposed has been paid.

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ART. 413. The proceedings instituted for the offenses referred to in No. 5 of Article 408, shall be in accordance with the provisions contained in the law and these Regulations.

Said proceedings shall be officially instituted, no schedule fees being collected by virtue thereof when the offense denounced is wholly or partially proven. If the complaint or denunciation has been finally declared manifestly improper, said fees shall be paid by the person who instituted it.

ART. 414. The other proceedings shall always be officially instituted, and without the collection of any schedule fees.

ART. 415. Presidents of Audiencias may impose the following disciplinary corrections on Registers of property:

Warning.

Reprimand.

Fine, not exceeding 500 pesos.

The Secretary may, besides, impose the following:

Suspension for a period of from three months to one year.

Forfeiture of promotion and transfer for a period of from one to three years.

These corrections shall only be imposed for the offenses embraced in Nos. 4 and 5 of Article 408.

In the case of suspensions, the appointment of a temporary Register shall immediately be made, in accordance with these Regulations.

ART. 416. Warnings and admonitions made to Registers in decision of administrative appeals, against the determination as to the legality of documents made by them, shall not be understood to be disciplinary corrections.

ART. 417. Presidents of Audiencias shall report to the Division the institution and the result of proceedings, so that they may be entered in the personal records of the proper interested persons.

ART. 418. Besides the suspension which may be imposed in accordance with Articles 415, Registers shall be administratively suspended from their offices:

First. When they have not deposited a quarter of the fees earned, as prescribed by Article 274 of the law.

Second. When, having been sentenced by a final judgment to indemnify loss and damage, they do not replace the bond or secure to the claimants the amounts of their respective judgments within the period fixed by Article 326 of the law.

Third. When a civil action against a Register, for offenses committed in the exercise of his office having been admitted, and a cautionary notice against his property having been decreed, in accordance with Article 328 of the law, the latter is rendered ineffective because he does not possess any property, or if he does not sufficiently secure the amount of the judgment, as prescribed by Article 326 of the law.

Fourth. When a Register, having been tried criminally, is sentenced to imprisonment, and the sentence is executed, or he remains at liberty under bail.

Fifth. When proceedings for removal are instituted in accordance with Article 308 of the law.

In the first, second, third, and fourth cases of this article the suspension shall be ordered by the President of the proper Audiencia, and in the fifth case the Secretary shall order it, if he considers it proper.

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ART. 419. A Register who is suspended from his office for any of the reasons mentioned in the fourth and fifth cases of the preceding article shall have a right, if the suspension is subsequently raised, to a full half of the fees collected by the temporary Register, who must for this purpose deposit the amount indicated monthly in the Government office of the Court of First Instance, at the disposal of the President of the Audiencia.

A temporary Register can not, in the cases of the preceding article, devote to the payment of the Assistants a greater sum than that fixed by his predecessor for the same purpose, without obtaining special authority therefor from the President.

ART. 420. The final judgment requiring the Register to indemnify the damage caused by his acts to private persons, shall not be published in the Gaceta de Madrid nor in the official papers of the proper Colony, if within the period of eight days, computed from the date of the notification, the payment of the amount due is made, or the amount necessary for this purpose is deposited.

When the Chambers of Justice of the Audiencias issue a final judgment sentencing a Register to make good any loss or damage, they shall order, at the same time the latter is communicated to the persons interested, that a copy thereof be forwarded to the proper Audiencia, so that, in view thereof, he may adopt the measures he may deem necessary as soon as practicable.

TITLE XII.—FEES OF REGISTERS.

ART. 421. The fees earned in accordance with Title XII of the law are the absolute property of the Registers, and they may be demanded at once, and in specie.

ART. 422. For any illegal exaction of fees, the persons interested may bring a judicial action in the proper manner and before the proper person, in accordance with law, according to the amount for which action is brought.

When the action is decided by a final judgment, the Register shall be liable for the return of double the amount of the excess, which shall be paid in the proper paper of fines with costs.

This provision shall be understood without prejudice to the prescriptions contained in Articles 409 of the Penal Code for Cuba and Puerto Rico, and 398 of that for the Philippines, when a criminal action is brought on account of the illegal exaction of fees.

A report shall be given the Colonial Department of all final judgments rendered, regarding the illegal exaction of fees by Registers.

ART. 423. In order that the Register may demand the fees earned in accordance with the provisions contained in Article 335 of the law, the person in whose favor the right has been recorded or entered, or the certificate has been issued, or the person who requested said record, shall be considered as directly interested.

If, after the record or entry of an instrument has been made and another is presented, transferring the ownership of the same estate, or right charged thereon, and for which the Register has not received the fees for the record, he can not decline to make the entry or record requested; but the person in whose favor the new record or entry is made shall remain under the obligation to pay the fees earned and not collected for the record of the first instrument.

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ART. 424. When the instrument presented in the Registry for record or entry does not state the value of the property or property right charged thereon, the interested persons must annex thereto a document showing said value, or, in the absence thereof, a declaration sworn to and signed, in order that the Register may adjust his fees in accordance with the schedule, the signers being responsible for any imposition or fraud committed.

When the Register has good reason to believe that in the instrument presented, or in the document or declaration annexed thereto, the true value of the property was incorrectly stated, to the detriment of his interests and to those of the Treasury, he may request of the Municipality or Assessment Board, and it must furnish to him an official memorandum of the supposed annual rental of the property, according to the Assessment lists. If from this rental, capitalized at 3 per cent on agricultural property and at 5 per cent on city property, it should appear that in fact, the estate has a greater value, he shall collect his fees in accordance with the latter, and shall include in the record or entry, besides the value given by the parties, the appraised value, according to the facts submitted, filing the memorandum in the proper package.

If, in the case mentioned in the preceding paragraph, the Municipalities or Boards have not forwarded the official memorandum of the supposed value of the property before the certificates are to be delivered or before the effects of the entry of presentation lapse, the Registers may collect their fees in accordance with the value given the property in the immediately preceding record.

For the adjustment of the fees to be collected for entries of attachments, the amounts for which the writs were issued shall be considered by Registers of property, when the value of the estate or property right entered is sufficient to cover said sum; should it not be sufficient, it shall be adjusted to the value of the estate or property right which is the subject of the entry.

ART. 425. The State, Province, and Municipality shall defray the fees for records ordered by them, relating to property or property rights which are subject to record, in accordance with Article 24; but when they refer to estates which are alienated, the amount thereof shall be included in the expenses of the auction proceedings, which must be defrayed by the purchasers.

ART. 426. In order that a Register may collect his fees judicially, in accordance with the provisions contained in Article 336 of the law, he shall prepare the proper statement, giving the name and surname of the debtor, kind and date of the work done in the Registry for which the fees are earned, the amount of the latter, and the numbers of the Schedule applied.

The Register shall present a petition to the Municipal Judge or to the Judge of First Instance of the subdistrict in which the Registry is situated, according to the amount of the claim, annexing thereto the statement mentioned in the preceding paragraph, and the proper Judge shall issue the mandate, proceeding afterwards for the judicial collection, in the manner prescribed by the Law of Civil Procedure.

When the Register has several claims against one or more debtors, they may all of them be embraced in one statement; and to determine the competency of the inferior Court, the total amount of the claims mentioned shall be taken into consideration.

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ART. 427. When the person who is to pay the fees earned by the Register considers that they are excessive he may appeal to the President of the proper Audiencia, requesting that they be adjusted, and declare what fees the Register shall collect, depositing beforehand in the office of the Court of First Instance the amount thereof. The President of the Audiencia shall request a report of the Register and shall decide as he may deem just.

If judicial proceedings for collection have been instituted, and the person interested does not agree with the account of the Register, he may bring the action referred to in the preceding paragraph before the inferior Court having jurisdiction of the question, which, after the amount has been deposited or the attachment executed, shall suspend the proceedings and forward the case to the President of the Audiencia for the proper decision, after taking the steps mentioned in the foregoing paragraph.

The persons interested may appeal from the decisions of Presidents of Audiencias to the Registry and Notarial Division.

ART. 428. An action for the collection of fees shall be barred after three years, computed from the date on which they were earned by the Register.

ART. 429. The official stub books shall be supplied to Registers by the Division, the former paying for them. The Registers must not collect any fees whatsoever without giving a detailed receipt to the person paying them, who shall sign the stub to be kept in the office, stating that he agrees thereto. Should he not know how to sign, a witness shall do so at his request. The omission of these requisites shall make the collection illegal and subject the Register to the consequent liabilities.

TITLE XIII.—RELEASE FROM EXISTING INCUMBRANCES.

ART. 430. Registers shall not admit any request the object of which is to release charges or incumbrances recorded in the old books.

ART. 431. In order that the incumbrances treated of in Article 349 of the Law may be the subject of proceedings to clear the title, it shall be indispensable that when said proceedings are instituted they are not possessed by the legal representative of the persons in whose favor they are recorded.

ART. 432. In the institution of proceedings for clearing title, which in accordance with Articles 358 et seq. of the Law is the attribute of Registers, the latter shall consider as material the differences they may find between the contents of the instruments presented to them for the institution of said proceedings to clear the title and the books of the Registry for the effects mentioned in rule number 3 of Article 361 of said Law, when they notice any considerable difference in the area of the estate, in the number of its trees or plants, the amount of the property right in the period of possession of each person, or when in the instrument any incumbrance is omitted which appears uncanceled in the Registry.

If the person interested considers himself injured he shall make use of his privilege by bringing administrative action or instituting judicial proceedings.

ART. 433. To carry into effect the notices prescribed by rules numbers 5 et seq. of Article 361 of the law, the following shall be observed:

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First. When the person to be notified resides, even temporarily, in the same town in which the Registry is situated, if he appears at the proper time and volutarily in the office, he shall be notified.

Second. If he resides in the town in which the Registry is situated, or in any other of the same subdistrict, and he should not present himself for the purpose voluntarily and at the proper time, the Register shall communicate with the Municipal Judge of the town of his residence, transmitting a copy of the material part of the petition, in order that, in accordance with the prescriptions contained in Articles 508 and 509 of the Law of Civil Procedure for the Philippines, and 524 and 525 of that for the Antilles, the former may appear before the Register in order to be notified, with a warning that if he does not appear within the period fixed he shall be liable for any damage that may arise.

Third. The Municipal Judge shall return to the Register the copy referred to in the foregoing rule, with the papers, showing that the citation mentioned in the same rule has been made, which papers the Register shall annex to the petition, in order that they may supply the effects of the notice, if the latter is not served, because the person to be notified can not be found.

Fourth. If the latter resides in a different subdistrict from that in which the Registry is situated, the Register shall forward the communication and the copy mentioned to the proper Judge of First Instance, so that he may order that said papers may be executed and returned in due time by the proper Municipal Court.

Fifth. The notice shall be served in the office of the Registry, unless the persons to be notified are officials, in which case it shall be served at their residence, after a proper courteous notice.

For the work done by the Register in compliance with the provisions contained in this article, fees shall be earned in accordance with the judicial schedules in force for Clerks (Actuarios) of Courts of First Instance for the institution of administrative proceedings.

Sixth. When there is proof of any unidentified interested persons, the Register shall forward to the Municipal Judge the edicts which are to be posted or published in the same locality, or in any other of those embraced in the same subdistrict; and with regard to those which are to be posted or published outside of the same, the Register shall forward them to the proper Judge of First Instance, so that he may order said publication.

Municipal Judges, after having made this publication, shall return the papers, stating this fact directly, or, in a proper case, through the Judge of First Instance of the subdistrict.

ART. 434. The memorandum which, in accordance with the provisions contained in Article 375 of the law, must be made by the Register in the margins of the special Registries of the estates, shall be made opposite the last entry of ownership of the estates or the right cleared in the following terms:

The mortgage (annuity (censo), or whatever it may be), which appeared to encumber the estate (or property right) in favor of ———, consisting of ———, has been extinguished by virtue of a judgment for clearing the title, issued by the Judge (or Court) or ——— on the —— day of ———, at the instance of ———, as appears by a certified copy issued by ———, on the —— day of ———, which has been presented in this Registry, on the —— day, at —— hour, as appears from entry of presentation number ——, folio —— of volume ——— of the Day Book ———, and it is filed in the proper package under number ——. (Date, surname, and fees.)

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The Register shall also make the proper marginal note, in compliance with the prescriptions of Article 453.

TITLE XIV.—UNRECORDED DOCUMENTS AND ENTRIES OF POSSESSION.

ART. 435. The prohibition to admit documents in Tribunals, Councils, and offices, which have not been recorded, mentioned in Article 389 of the law, shall be observed even when said documents can no longer be recorded by the person who desires to make use thereof, provided it is desired to prove any right whatsoever arising from the instrument or contract to which they refer, but not when they are invoked by a third person in support of a different right, not depending on said instrument or contract.

With the exception of this case and those mentioned in Article 389 of the law, the Tribunals, Councils, and offices shall return to the persons interested the unrecorded instruments which are presented, as though executed without the requisites of the law, and they shall not permit that a certified copy or extract of the same shall be made in decrees or proceedings.

Notaries shall state, in documents to be recorded, the obligation to present them in the Registry, and shall call attention to the provisions of the said Article 389 of the law.

ART. 436. An owner who does not possess a recorded title may only justify the possession, for the purpose of recording his right, by means of the proper proceedings instituted in accordance with Articles 390 and 391 of the law.

When the persons interested can not, for any reason whatsoever, present in the proceedings the documents mentioned in Article 391 of the law, Registers shall refuse the record, without prejudice to the person interested making use, should he deem it proper, of the privilege mentioned in Article 395 of the law, to prove the acquisition of ownership.

If it appears from the documents that the tax is paid in the name of the owner by a person other than the one who desires to prove the possession, and there is no other defect or obstacle preventing the record, the latter shall be suspended, and a cautionary notice shall be made thereof, because of an error capable of correction.

ART. 437. It shall be understood that a written title is lacking for the purpose of recording the possession in accordance with Articles 390 et seq. of the law, not only when the person really does not possess said title, but also when, the owner having one, he can not demand its immediate record because it has to be brought from a point at a distance from the place where it is to be recorded, or for any other reason whatsoever which compels him to defer its presentation. This circumstance may be stated in the proceedings and in the record itself.

ART. 438. In the proceedings to justify possession the person instituting them can not be required to present the title of acquisition of the estate or right, nor shall any opposition on the part of an interested person be admitted, except such as is limited exclusively to a right of possession in his own name.

The question of right may be brought up in a declaratory suit only.

In the judicial proceedings for possession, as well as in voluntary jurisdiction, neither the intervention of a solicitor nor a lawyer is required, and stamped paper shall be used.

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When the object of the same is to record one or more estates, the value of all not exceeding 300 pesos, Court Clerks (Actuarios) shall be entitled to 2 pesos as judicial fees.

If the value of the estate or estates exceeds 300 pesos, and is not more than 1,000, they shall be entitled to 4 pesos as said fees.

If the value of the estate or estates exceeds 1,000 pesos, the fees shall be paid in accordance with the judicial schedule.

The fees earned in said proceedings, when they are instituted before Municipal Courts, shall be distributed, a third each, to the Judges, Public Prosecutors, and Clerks of the same.

ART. 439. Whenever it is necessary to suspend the carrying out of the provisions contained in the preceding article in regard to the amount of the fees, the person interested shall request it, annexing to his petition a sworn statement stating the value of each one of the estates. If said value has been diminished to the prejudice of the officials who are entitled to the collection of the fees, the latter may make such claims as they may deem just, but without staying the course of the proceedings requested, nor making any further charges on this account.

ART. 440. The records which must be made to prove the ownership or possession, which have been justified by the means established by Article 390 et seq. of the law, shall be made in accordance with the rules contained in the law and these Regulations for records in general, besides stating the special details required in each case, as contained in the documents presented in the Registry, to obtain the record.

ART. 441. The persons who have in their favor any entry or possession, and desire to make use of the privilege allowed them by paragraph 6 of Article 393 of the law, shall present a petition to the Municipal Judge of the place in which the estate is situated, with a certificate of the Register, in which shall be stated that twenty years have elapsed from the date of the record, and that there does not exist in the Registry any memorandum indicating that the prescription has been interrupted, requesting in virtue thereof that the conversion of the entry of possession into a record of ownership be announced by an edict in the Official Bulletin of the Province, in order that the persons who may consider themselves prejudiced may oppose it within the period of thirty days, computed from the date of the publication of said edict.

After the thirty days have elapsed without any claim having been made, the Municipal Judge shall state this fact, shall declare the proceedings closed, and shall order a certified copy in duplicate of the foregoing proceedings issued to the petitioner.

With this copy the petitioner shall appear before the Register in order that the conversion may be carried out, which shall be done by means of a marginal note; one of the copies of the certificate being filed and the other being returned to the person interested.

ART. 442. Any person who has in his favor any of the property rights mentioned in the second, third, fifth, and sixth numbers of Article 2 of the law, which has been acquired before May 1, 1880, in the Antilles, and December 1, 1889, in the Philippines, on another's real property, may ascertain by the Registries if it is recorded or not. If the record has not been made, although the ownership of the property is recorded in favor of its owner, the person interested may re-

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quest the record of the right in a separate entry by presenting his title or taking advantage of any of the means established by Title XIV of the law.

If neither the property right in question nor the ownership of the property affected thereby be recorded, the person who has said right in his favor may present his title at once, so that from it an entry of presentation and a cautionary notice may be made because of an error capable of correction, the owner of the property being summoned afterwards to record his ownership within the period of thirty days.

ART. 443. The summons shall be made either by means of a notarial instrument or by the holder of the property right applying to the Municipal Judge of the domicile of the owner of the encumbered property, with a petition prepared on stamped paper, requesting that the latter be ordered within the period of thirty days, computed from the day following the notification, to record the ownership of the property, warning him that, should he not do so, or should within said period the record requested be not objected to, it shall be entered as may be proper.

The owner of the encumbered estate can not object to said record without requesting at the same time the record of ownership with the presentation of the proper title, or a certificate stating that contradictory proceedings had been instituted by him for the judicial declaration of said ownership.

The request, with the decree and the proceedings, shall be returned to the person who made it.

If the owner of the property has no known domicile, or his whereabouts are unknown, he shall be cited in the manner prescribed in rule No. 5 of Article 391 of the law.

ART. 444. If the thirty days elapse without the owner of the encumbered property having objected to the record, requesting at the same time that of ownership, in the manner and with the requisites prescribed by the second paragraph of the preceding article, the person who has the property right in his favor may present the documents required to make the record, or may apply to the Judge where the files exist in which they are contained, so that a copy thereof may be ordered made, after the citation of the owner of the encumbered property, and that they be delivered to the petitioner; in the absence of said documents he may demand the ownership or possession of the owner of the realty, by any of the means established for the purpose in Title XIV of the law.

ART. 445. After any of the foregoing documents have been presented in the Registry, with the one showing that the owner has been summoned, the Register shall make the entry of presentation, and make the record within the period fixed by Article 56, if no Treasury fees are due for the instrument; but should any be due he shall suspend it until they have been paid.

The summons shall be filed in the Registry, and a certificate thereof shall be given the interested person who may request it.

After the encumbered real property has been recorded the cautionary notice of the property right shall be converted into a definite record.

ART. 446. If a cautionary notice of the instruments referred to has been made, in accordance with Article 442, only because of an error

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capable of correction, the former shall be changed into a definite record, if any of the persons interested request it, provided the titles entered are again presented, and in these or in other documents which are prima facie evidence of the proof required by Article 20 of the law appears, and an examination of the Registry shows, that the ownership is not recorded in favor of any person whatsoever.

ART. 447. If the owner of the encumbered real property objects to the record requested, within the period of thirty days following the summons, presenting the proper title for record, or a certificate stating that contradictory proceedings had been instituted for the judicial declaration of said ownership, the Register shall make a marginal note in the entry of the cautionary notice of the property right, stating that the owner of the real property has objected to it in virtue of any of said acts. The holder of the property right may bring the proper action against the objector, or may request of the Judge of First Instance of the subdistrict in which the real property is situated, that the owner of the latter formulate his complaint within a short period, and if said period passes without its being presented, the conversion of the cautionary notice of the property right into a definite record shall be ordered. After the complaint has been made, a cautionary notice thereof may be ordered, at the request of the person interested.

ART. 448. The costs and expenses caused to obtain the record of the encumbered property shall be defrayed by the owner of the same, and if it is owned by two or more persons, the Register or the person interested who paid them may demand the same of the part owners, there being reserved the right of action of the latter against the others to recover from them the amount to be paid *pro rata*.

TITLE XV.—EFFECTS OF RECORDS CONTAINED IN THE OLD BOOKS AND SUBSTITUTION OF THOSE RENDERED USELESS BY FIRE OR OTHER ACCIDENTS.

ART. 449. In order that the entries of ownership contained in the old books of the Registry, referred to in the first paragraph of Article 397 of the Law, may produce with regard to third persons the effects prescribed by the legislation in force at the time of making said entries, it is indispensable that they be transferred to the new books. This transfer must be requested in writing, in accordance with the proceedings prescribed in the following articles, and may be requested at any time. If the transfer is not made they shall continue to be effective, although not against third persons, according to the provisions contained in the first paragraph of Article 397, but only between the persons interested, and notwithstanding that they do not contain some of the requisites which, under penalty of nullity, are required by Articles 9 to 13 of the law, in accordance with the last paragraph of said Article 397.

Entries which are not of ownership, referred to in the second paragraph of Article 397 of the law, must be transferred in order to prejudice third persons, within the period of one year, computed from the date of the promulgation of the law; this transfer shall be requested in writing, within said period, in accordance with the following articles, having all its effects from the date of its entry in the

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old books, although the transfer is made subsequently, provided the request has been presented within the year mentioned.

On the day following the close of the year referred to in the preceding paragraph, Registers of property shall forward to the proper delegated Judges a statement of the requests, made up to the day previous for the transfer of records contained in the old books, which transfer had not as yet been made on said day, stating the names of the petitioners and the rights which they desire to record. The delegated Judges shall send said statements on the same day to the Presidents of Audiencias, who shall forward to the Division a certified copy of all of them within the following month, the originals being filed in the Government offices.

The entries referred to in the second paragraph of this article shall also be effective between the parties, although not transferred to the new books, in accordance with the last paragraph of Article 397 of the law.

ART. 450. All the persons who have in their favor records in the old Registries, even when they lack some of the requisites prescribed by Articles 9 to 13 of the law, may request that they be transferred to the new Registries.

The Register shall add thereto, immediately after the entry transferred, the details lacking, taking them from the new instrument presented to him, should they appear therein, and otherwise from a memorandum required by him for this purpose, made in conformity and signed by all the persons interested in the record.

This memorandum shall remain on file in the Registry.

For the purposes of this article, the persons who took part in the instrument or contract, which is the subject of the record, shall be considered as an interested party, and the person to whom said instrument or contract reserves some property right, shall be considered to be a third party.

Said addition shall be made immediately after the last words of the record transferred, in the following terms:

I hereby certify that the preceding entry, lacking the details required by the law, I add them in accordance with the instrument of ———, which is now presented on the part of A, or with the memorandum which he and B have delivered to me, signed in conformity by both, in the following terms: (Here the details added; and afterwards it conforms, etc.)

ART. 451. To add the transfer of the old record in the case mentioned in the preceding article, the documents containing the details to be added shall be presented, and, in their absence, the memorandum prescribed in said article, signed by the petitioner.

ART. 452. When the details to be added to the transfer of an agricultural estate refer to its limits or bounds by other estates, which do not appear in documents which are prima facie evidence, the owners of the abutting estates shall sign their conformity with the memorandum, which, in default thereof, must be presented to request the addition.

The Register shall assure himself of the authenticity of the signatures, and of the identity of the persons who authorized said memorandum.

The additional memorandum mentioned in the first paragraph of this article should only be demanded when the addition can not be

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made by means of other instruments, inventories, certificates, or any kind of public documents in which the facts necessary for the purpose are contained.

ART. 453. The records made in the old books which have not been transferred to the new ones may be canceled by means of marginal notes opposite the same.

If they have been transferred to the new books, the cancellation shall be made in accordance with the provisions contained in Title IV of the law, and a memorandum shall be made in the entry of the old book, stating the cancellation and the book and folio in which it may be found.

ART. 454. If the record made in the old books to be canceled by the marginal note mentioned in the preceding article is that of a property right, and the record of ownership of the estate encumbered by said right is also contained in the old books without having been transferred to the new books, the memorandum of the cancellation must be made in the margin of the entry of ownership and in the margin of that of the property right, if they are separate.

If the record of ownership of the encumbered estate has been made in the new books of the Registry, that of the property right being in those of the old ones, the cancellation may be made immediately following said record of ownership, stating in a single entry the existence of the property right and its cancellation, without prejudice to making in the old book the memorandum prescribed in the second paragraph of the foregoing article.

In case the record of the ownership of the encumbered estate has not been made either in the old books or in the new ones, and that of the property right which is the subject of the cancellation appears in the former, the marginal note shall be made opposite the latter, which shall produce the effects of a cautionary notice, until the record of ownership is made.

ART. 455. In all records, cautionary notices, or cancellations made in the new books, of an estate or property right recorded in any manner whatsoever in the old books, the number, folio, and name of the book containing said entry shall be cited.

The entries made in the indices of the new books relating to estates or rights recorded in the old ones shall contain the citation mentioned in the foregoing paragraph, besides the one referring to the new books.

ART. 456. For the effects of the Mortgage Law and these Regulations, by "old books of Registries" there shall be understood those kept prior to May 1, 1880, in the Antilles, and December 1, 1889, in the Philippines, and "new books," the ones subsequent to said dates.

ART. 457. When the persons interested request the record of their instruments, in accordance with the provisions contained in Articles 398 et seq. of the law, they shall annex to the documents the receipt for the fees which should have been paid when the first record was made, and which was to have remained in their possession. If both copies of the receipt which was issued in conformity with the provisions contained in Article 248 of the law have been lost or mislaid, the person interested shall annex a certificate of the Treasury Department, proving that the fees for the instrument or contract which it is desired to record anew have been paid.

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ART. 458. With the certificate or receipt they shall present a verbatim copy of these documents signed by the interested persons themselves, or by the person presenting it, or by a witness, should the latter not be able to sign.

ART. 459. The Register shall compare the original with the copy, and if he finds it correct he shall approve it with his surname, and after being stamped with the stamp of the Register he shall file it in the place of the original receipt.

ART. 460. On the receipt or certificate presented by the person interested, the Register who retains possession of the copy in the manner stated shall make a memorandum, stating that this has been done, with the formalities of his surname and the stamp mentioned in the preceding article.

ART. 461. When the document which is to be the subject of the new record includes one or more estates situated within the jurisdiction of several Registries, in presenting to each one of the Registers the receipt or certificate, a copy thereof shall also be presented, and the other formalities prescribed by the preceding articles shall be observed.

ART. 462. In case of the destruction or loss of the duplicates or authenticated copies of the receipts, which Registers must keep for the purpose of said Article 248 of the law, without the records of the instruments or contracts referred to therein having disappeared, they must request of the Treasury offices a certified statement, showing the amounts paid by reason of the tax imposed at the proper time on said instruments or contracts, said statements being filed in the Registry.

PROVISIONAL ARTICLES.

1. The class and bond actually assigned to Registries of property of the Colonies shall continue, provisionally, in force, until a definite classification is made, from which date the periods stated in Article 1 of these Regulations shall be computed. Registers of the fourth class shall have the rank of the third class, in accordance with provisional Article 2 of the law, retaining, however, the same bonds.

Registries.

	Bonds.
FIRST CLASS.	*Pesos.*
Albay	2,000
Batangas	Idem.
Bulacan	Idem.
Camarines S	Idem.
Cardenas	10,000
Cebu	2,000
Habana	15,000
Ilocos N	2,000
Ilocos S	Idem.
Iloilo	Idem.
Laguna	Idem.
Manila N	Idem.
Manila S	Idem.
Matanzas	10,000
Pampanga	2,000
Pangasinan	Idem.
Pinar del Rio	10,000
Ponce	2,500
Tayabas	2,000
San Juan Bautista	2,500

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Registries—Continued.

	Bonds.
SECOND CLASS.	*Pesos.*
Arecibo	1,000
Bejucal	4,000
Cienfuegos	8,000
Cavite	1,500
Capiz	Idem.
Guanajay	4,000
Humacao	1,500
Mayaguez	Idem.
Negros	Idem.
Nueva Ecija	Idem.
Puerto Principe	8,000
Sagua la Grande	5,000
San German	1,500
Santa Clara	8,000
Santiago de Cuba	Idem.
Trinidad	4,000
Union	1,500
THIRD CLASS.	
Abra	1,000
Aguadilla	800
Alfonso XII	1,000
Antique	Idem.
Baracoa	Idem.
Barotac Viejo	Idem.
Bataan	Idem.
Batanes	Idem.
Bayamo	Idem.
Bohol	Idem.
Cagayan	Idem.
Caguas	800
Calamianes	1,000
Camarines N	Idem.
Colon	2,000
Guanabacoa	3,000
Guayama	800
Guines	2,000
Holguin	Idem.
Isabela	1,000
Jaruco	Idem.
Leyte	Idem.
Manzanillo	Idem.
Marianas	Idem.
Mindoro	Idem.
Misamis	1,000
Nueva Vizcaya	Idem.
Samar	Idem.
San Antonio de los Banos	2,000
San Cristobal	1,000
San Juan de los Remedios	3,000
Sancti Spiritus	Idem.
Surigao	1,000
Tarlac	Idem.
Zambales	Idem.
Zamboanga	Idem.

2. On the day on which the law goes into operation the three books of rank for the provision of Registries of property which were kept in the General Supervising Office of Grace and Justice of the Colonial Department shall be closed, one for all the Colonial provinces being opened in their stead. The first Register of each class, of whose vacancy the Registry and Notarial Division has knowledge, after said day, to whom the last vacancy of the class was due, shall be announced, no matter in what province of the Colonies it occurred.

3. The questions relating to public offices conferred by the Crown in the Colonial provinces shall continue under the charge of the Registry and Notarial Division.

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(Paragraphs 4, 5, 6, and 7 have been omitted, as they apply solely to Cuba and the Philippine Islands.)

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8. The subsidy to which Registers have a right, according to additional Article 4 of the law, shall be paid them at the end of each quarter. The Delegate, when he makes his quarterly inspection, shall examine the stubs of the books referred to in Article 429 of these Regulations; he shall verify, by examining the entries to which they refer, the correctness of the amounts which appear therefrom to have been collected by the Register; he shall state in the memorandum of the inspection the total of the fees collected by the Register during the quarter, and, after making the proper balance, he shall order that there be credited to the Register, if it is proper, the part of the corresponding subsidy, forwarding the proper order for this purpose to the Treasury of the province, within the third day, so that it may make the payment. In the memorandum of the inspector the amount which the Delegate ordered credited by way of a subsidiary shall also be stated.

Approved by His Majesty.
Madrid, July 18, 1893.

ANTONIO MAURA.

I.—*Entry of presentation of an instrument presented by the interested party in person.*

MARGINAL NOTES.	Ordinal number.	
The instrument to which the adjoining entry refers is recorded in volume — of the Municipality of——, folio —, entry —, estate ——. *Date.* *Surname of the Register.* *(Signature of the person who presents the instrument, and in case he does not know how to write or is unable to sign, at his request, the signature of a witness.)*	12.	Mr. J. P., a resident of R., presents to-day at —— p. m. an instrument, constituting a loan with a mortgage, executed in this city, on the —— day of ———, before the notary, Mr. A., by which Mr. L. M. constitutes in favor of Mr. J. P. a mortgage in the sum of ——— pesos upon house number —— on ——— street in this city. Humacao, the —— day of ———. *(Signature of the Register.)* Fees: 75 centavos, No. 1 of the Schedule.

II.—*Entry of presentation of an instrument presented by an agent.*

MARGINAL NOTES.	Ordinal number.	
The cautionary notice to which the adjoining entry refers is suspended, as the estate does not appear recorded in favor of Mr. L. B.; and as it is also not recorded in favor of any other person, the note of said suspension is made on folio —, volume —— of the Municipality of —, estate ——, letter ——. *Date.* *Surname of the Register.*	2.	Mr. J. R., residing (or domiciled in this town, as agent of Mr. J. P., residing in ———, presents this day at —— a. m. a mandate issued by Mr. A. S., Judge of the Court of First Instance of this subdistrict, on the —— day of the current month of January, ordering that a cautionary notice on the coffee plantation X, situated in this Municipal district, be made, belonging to Mr. L. B., to secure the sum of ——— pesos, which he owes to the said Mr. J. P., ——— pesos as interest, and ——— as costs and expenses of the suit. Guanabacoa, the —— day of ———. *(Signature.)* Fees: 75 centavos; No. 1 of the Schedule.

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III.—*Record in full of an instrument, including two estates, situated in the same municipal district, both mortgaged to secure part of the deferred purchase price.*

ESTATE NUMBER ——.

MARGINAL NOTES.

The other estate included the same instrument, from which the adjoining entry was made, is recorded in the same volume, folio ——, estate ——, first entry.
Date.
Surname of the Register.

The first payment of Five Thousand pesos has been made, as appears from an instrument, acknowledging the payment made in —— the — day of ——, before the notary, Mr. L. C., and presented in this Registry at — o'clock in the morning of the — day of ——, with the number — folio — volume — of the Day Book.
Date.
Surname of the Register.

Fees: 50 centavos; number 6 of the Schedule.

Ordinal number.

1.

Town.—House number ——, on ——— Street, in this town. It is bounded: On the right by house number —— of ——— Street; in the rear by house number —— of ——— Street; and on the left by ——— Street. Its superficial area is ——— square meters, and it consists of a ground floor with appurtenances to be used for stores, and of a main floor. According to the record made on folio ——, volume —— of the old "Anodaturía" of this town, it appears encumbered with a mortgage of ——— pesos, and interest upon said principal at the rate of —— per annum, and also, according to the instrument presented, it is subject to a servitude preventing the increase in height of the building. Mr. L. de P. y R., single, of age, silversmith, residing in this town, acquired said estate by purchase from Mr. J. de L., according to the instrument executed in this town before the notary, Mr. P. G. L., on the —— day of ———, of the year One Thousand Eight Hundred and Thirty, and is selling it now, together with another estate, to Mr. Z. I. M., married, of age, living upon the income of his estates, the consideration of the sale being Fifty Thousand pesos for both estates, of which he has paid in cash Twenty Thousand pesos in gold and silver coin, the receipt of which has been certified to by the notary, being under the obligation to pay the remaining Thirty Thousand pesos in the following manner and terms: Five Thousand pesos on the twenty-eighth day of February, One Thousand Eight Hundred ——, Ten Thousand pesos on the same day of the year One Thousand Eight Hundred ——, and the remaining Fifteen Thousand pesos on the thirtieth day of December, One Thousand Eight Hundred ——, in gold and silver coin, at the residence of the vendor, both the estates being mortgaged to secure the payment of the unpaid part of the selling price; the estate of this number being appraised at ——— pesos, subject to the payment of Twenty Thousand pesos, with the waiver of any new appraisement or proceedings leading to such new appraisement. Mr. Z. I. M. records his instrument of purchase, the contract of purchase having been entered into upon the following condition, which is the only one affecting the rights of the grantee: "Fifth, Mr. L. de P. y R. reserves the right to live in and use the ground-floor premises, No. 5, for two years without being dispossessed, and rent free." The other estate included in the same instrument is recorded as stated in the marginal note of this entry. All the foregoing appears in the above-mentioned instrument, the deed of sale, executed in ——, on the second day of May One Thousand Eight Hundred ——, before the notary Mr. G. R., presented in this Registry at —— o'clock in the morning, on the —— day of July last passed, according to entry number ——, folio ——, volume —— of the Day Book —. And all this being in conformity with the instruments, to which I refer, I sign these presents at Iloilo, this —— day of ———, 18—.

[*Full signature of the Register.*]

Fees: 20 pesos, number 7 of the Schedule.

REMARKS.

(1) In case the estate should be already recorded in favor of the vendor, and there should only be some difference in the boundaries or in some other details, the entry shall begin in the following terms:

"Town —, House No. ——, the description of which appears in the preceding record, is in conformity with the description contained in the instrument pre-

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sented, with the only difference that, according to the said instrument, it is bounded in the rear by ———, which now stands in the place where formerly was house number —— of ——— Street." After having stated the incumbrances, there shall be added: "Mr. B. de P. y R. is the owner of this estate, according to the preceding record, and sells it, together with another estate," etc.

(2) In case the vendor should desire that his mortgage rights be recorded in the same entry, he shall ask the Register to do so on presenting the instrument, in which case the paragraph relating to the record shall be worded in the following manner:

"Mr. Z. I. M. records the ownership of the estate acquired by purchase, and Mr. L. de P. y. R. his mortgage right upon the estate of this number, said contract having been entered into," etc.

(3) In the marginal note of the entry of presentation and at the bottom of the instrument there shall be clearly stated whether the sale only is to be recorded, or the sale and the mortgage.

IV.—*Brief first record of an estate acquired before the 1st of May, 1880, together with another estate situated in the same municipal district.*

ESTATE NUMBER ——.

MARGINAL NOTES.	Ordinal number.	
(The same as the first note of form No. III.)	1.	Rural.—Coffee plantation, called "Esperanza," situated in the district of ———. It is bounded on the North by the sugar estate of Mr. J. M.; on the East by the River ———; on the South by the road leading from ——— to ———; and on the West by the fruit orchard belonging to the Agricultural Development Company. It measures —— "cuerdas," equivalent to —— hectares, —— ares, —— centiares. It contains Eight Thousand coffee plants, Two Hundred cocoanut palms, and other fruit trees, all the appurtenances common to estates of the same class, one two-story dwelling house, one one-story house, and three huts. It does not appear to be charged with any incumbrances. Mr. F. B. y T., of this city, proves that he was the owner of this plantation prior to the 1st of May, 1880, by inheritance from his father, who died on the —— day of ———, under the will executed in said city on the —— day of ———, before the notary, Mr. B. C., this plantation being awarded to him for the sum of Ten Thousand pesos in satisfaction of his part of said inheritance, according to the instrument of adjudication, executed in ———, on the —— day of ———, and he sells it, together with another estate, to Mr. D. A. y B., residing in ———, for Twelve Thousand pesos, for this estate alone, as appears from the instrument of the sale executed in ———, on the —— day of ——— of the current year, before the notary, Mr. L. A., and, in accordance to what is more fully stated in the record ——, estate number ——, folio —— of this volume, Mr. D. A. B. records the ownership of the estate of this number, which he acquired by deed of purchase. San Juan de Puerto Rico, this —— day of ———, 18—. (*Full signature of the Register.*)

Fees: 14 pesos, number 7 of the Schedule.

REMARKS.

(1) In case the estate be already recorded, and the description in the deed be identical with the description in the record, there shall be only entered:

"Rural.—Coffee plantation, called 'Esperanza,' the description of which is embodied in the previous entry, identical with the description made in the instrument now presented. It does not appear charged with any incumbrances. Mr. F. B. y T., a resident of this city, is the owner of this estate, according to the preceding record, and sells it, together with another estate, to Mr. D. A. y B., a resident of ———," etc.

(2) In case there be any incumbrances, they shall be stated in the following manner:

"This estate is encumbered with a mortgage and with an annuity (censo), as appears from the first part of the preceding record."

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V.—*Record of acquisition by will.*

ESTATE NUMBER ——.

MARGINAL NOTES.	Ordinal number.
The other ten estates included in the instrument from which this entry was taken are recorded in the place indicated in the marginal note of entry number —, folio —, volume —, of the Day Book. (*Date and surname.*)	4.

Rural.—Meadow land, the description of which appears in the first entry of this number, identical with the description made in the instrument now presented. According to the Registry, it is not charged with incumbrances of any kind. Mr. A., —— years old, widower, farmer, and a resident of ———, acquired this estate in the manner stated in —— day of ———, leaving a nuncupative will, in which he constituted as his only and universal heirs his minor children, Mr. B., Mr. C., and Miss D., together with other provisions relating to his funeral, to charitable bequests, and to the appointment of guardians and executors. The proper testamentary proceedings being instituted before the Judge of First Instance, and after the division having been made by mutual agreement between said executors and the guardians representing the minors, after they had been officially confirmed in their duties, the Court has granted the decree, dated —— of ———, approving the measures adopted and ordering a judicial record of them as well as the issue of copies of it to each person interested in his respective share of the inheritance. In said division the estate of this number has been awarded as a legacy to Mr. B., —— years of age, single, and domiciled in ———, appraised at Two Thousand pesos, under the conditions resulting from the opinions and declarations of the appraising executors and the partitioners, accepted by the interested parties: First, the right of way over this estate is granted in favor of the adjoining farm awarded to Miss D———, which right of way shall cross the meadow longitudinally from East to West, namely, from the common boundary between the dominant and servient farms up to the high road of ———, said right of way to continue until the owners of both estates by mutual agreement arrange otherwise; second, in order to fulfill the obligation imposed by the testator upon his children to have ten masses said every year for the repose of his soul during the life of his heirs, this estate being the proportional share of Mr. B., is encumbered for the amount of three masses, said masses to be said annually in the chapel of ———, said encumbrance to be in force during the life of Mr. B., unless he should wish to free said estate from this burden by reason of an exchange, sale, or any other means of alienating said estate for a consideration; for in such cases he could do so with the permission of the Bishop of his Diocese, substituting said burden by a similar one, and under the same conditions as those contained in this covenant, upon another unencumbered estate belonging to him. Mr. B. records the ownership of this estate, acquired by the testamentary heirship, upon the conditions as stated, and of ten other estates recorded as indicated in the marginal note. All the above is included in the inventory, appraisement, and division of the property executed before the notary of ———, Mr. H., under the date of —— of ———, of which the first copy of the inheritance in favor of this party was filed in the Registry at 10.15 a. m., on the 14th day of the present month, according to what is stated in entry number ——, folio ——, volume —— of the Day Book. And all this being in conformity with the documents, to which I refer, I sign this entry in Matanzas this —— day of ———, 18—.

(*Full signature of the Register.*)

Fees: 6 pesos, number 7 of the Schedule.

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VI.—*Record in favor of the heirs of an intestate relating to an estate which had been recorded in the registry in the name of the deceased.*

ESTATE NUMBER ——.

MARGINAL NOTES.	Ordinal number.	
Annulment claimed by Mr. F. in the Court of First Instance of ——, ——, Office of the Clerk of the Court. (*Date and surname.*) The adjoining record number 2 is canceled by the following entry number 3, folio —, of this volume. (*Date and surname.*)	2.	Town.—House No. 7, on ——— Street, the description of which is to be found in the preceding record. It is free from incumbrances. Value, Five Thousand pesos. Mr. A. was the owner of the estate of this number by purchase, according to the statement in the preceding record; and, having died on the —— day of ———, without any evidence tending to show that he had left a will, Mr. B. and Mr. C., residents of ———, of age, and lawyers by occupation, applied to the Court of First Instance of ———, asking to be declared heirs of the intestate, according to the proceedings established in section 2, title 9, book 2, of the Law of Civil Procedure. Upon the termination of the proceedings provided for in the above-mentioned section, and after the hearing and consent of the Department of Public Prosecution, Hon. D. ———, the Judge of the Court of First Instance of ——— and its subdistrict, has issued on the —— day of ———, through the Clerk of the Court, Mr. ———, the decree, by virtue of which Mr. B. and Mr. C., the nephews by blood of the deceased, have been declared heirs of the deceased intestate, Mr. A., share and share alike, without prejudice to a third party, who may have a better right. Mr. B. and Mr. C. record the acquisition of the ownership of said estate by rights of intestate inheritance, without prejudice to third parties, who may have a better right. All the above appears from the copy of the said decree, issued on the —— day of ———, by Mr. ———, the Clerk of the Court of First Instance of the said town, which was presented ——, etc. This record, being in conformity with the documents to which I refer, I sign it in the City of Manila, this —— day of ———, 18—. (*Full signature of the Register.*)

Fees: 10 pesos, number 7 of the Schedule.

VII.—*Record of a final judgment, annulling the preceding record, and declaring the ownership in favor of another person.*

ESTATE NUMBER ——.

MARGINAL NOTES.	Ordinal number.	
The other two estates included in the instrument, from which this record is taken, are registered in folio — of volume —, of the Municipality of ——, estate number —, fifth records. (*Date and surname.*)	3.	Town.—House, the description of which appears from the first record of this number, and is identical with the description in the instrument now presented. It is free of incumbrances. This estate was awarded to Mr. B. and Mr. C. upon the death of Mr. A., according to what is stated in the preceding record number two. Claimed by Mr. F., —— years of age, single, a merchant by occupation, and a resident of ———, before the Court of First Instance of ———, demanding the annulment of the declaration of heirship, by virtue of which said award was made, as well as the annulment of the other matters, which as a consequence of said declaration have been performed and approved after the death of Mr. A.; the suit passed through all the stages, the final judgment having been obtained from the Supreme Court, declaring the annulment of the abovesaid declaration, and declaring null and without any legal effect all the acts which Mr. B. and Mr. C. as heirs of Mr. A. performed, amongst which are the records of the Registries of property; in the same manner the right belonging to Mr. F., the plaintiff, in his capacity of heir, is declared, according to the sealed will executed by the deceased on the —— day of ———, which will was given the legal force of public instruments in virtue of the decree of the ——— Court, made on the —— day of ———. Mr. A. died without any legitimate heirs, on the —— day of ———, and has constituted in the above-mentioned sealed will his nephew, Mr. F., as his universal heir to all his property, with other particulars which do not limit in any way the right that is being recorded. By virtue of the foregoing statement the pre-

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ceding record, number two, is canceled, and Mr. F. records his ownership, acquired by testamentary heirship, of this estate and of two other estates, recorded in the place indicated in the marginal note. All the above appears from the final judgment of ———, issued by the Supreme Court in cassation, taken to said Court by Mr. C. from the decision in an ordinary civil action demanding the annulment of the declaration of heirship, instituted by said Mr. F. in the Court of ———, which final judgment is incorporated in the mandate of said Court, which has been issued from the said Court in duplicate through the actuary, Mr. X., under the date of —— day of ———; and will certified to by the notary, Mr. P., on the —— day of ———, the abovesaid mandates and the first copy of the instrument having been presented at 11.25 a. m. on the —— day of ———, according to what is stated in entry number ——, folio ——, volume —— of the Day Book, one of the mandates having been filed under number ——, in the proper package. And all being in conformity, etc.

VIII.—*Entry of ownership by virtue of judicial proceedings.*

ESTATE NUMBER ——.

MARGINAL NOTES.	Ordinal number.	
——	1.	Town.—House designated by number —— of ——— Street, in the town of ———, block number ——, its superficial area being ——, equivalent to —— ares. It is bounded on the right by house number ——, belonging to Mr. ———; on the left by house number ——, the property of Mr. ———; and on the rear by ——— Street; its value is —— pesos. This estate is only encumbered with an annuity (censo) of —— pesos of principal and —— pesos of annuity in favor of ———, which payments fall due each —— day of ——— every year; said annuity (censo) not having been recorded. Mr. L., —— years of age, landowner, a resident of ———, has applied to the Court of First Instance of ———, stating that he has acquired the ownership of said house by purchase, by virtue of a verbal contract entered into with his neighbor, A., on the ———, and, desiring to record his ownership, he asked that after due process of law it be declared that he has proven said ownership. Having heard the Department of Public Prosecution, and having summoned the vendor, A., as well as the owners of the adjoining estates, said action at law proceeded in the manner provided for by art. 395 of the Mortgage Law, judgment being rendered by the said Court on the —— of ———, through ———, which became final and by which it was declared that Mr. L. is the owner of the aforesaid house; by virtue of which he records the ownership of this estate without any conditions whatsoever. The above appears in the copy of the judgment in the above said action, which copy has been presented in this Registry on the —— day of ———, at —— o'clock in the ——, according to entry number ——, folio —— of the Day Book. And all being in conformity with the documents to which I refer, I sign this entry in Arecibo, this —— day of ———, 18—.

(*Full signature and fees.*)

IX.—*Record of a judicial sale instrument.*

ESTATE NUMBER ——.

MARGINAL NOTES.	Ordinal number.	
——	4.	Town.—House ——. (For the description of the property see the preceding forms.) This property is charged with the incumbrances which appear in the second and third records of this number, folio ——, volume ——, of the Municipality of this city. Mr. A. I., a resident of ———, —— years of age, widower, planter, acquired said estate as an legacy from his father, Mr. L. P., according to the first record. An attachment of this house having been issued in certain proceedings in a summary action, instituted against Mr. A. I., the owner of the same, as appears from notice, letter A, of this estate, its sale at public auction was decreed, and as soon as it was issued the appraisement of the estate was ordered and the proper notices of said auction were posted for twenty days. At the public auction it was sold to the highest bidder, Mr. M. N., a resident of ———, —— years of age, married, and a merchant by occupation, for the sum of ——— pesos; which sale was approved by the Court, said Court ordering the execution of the proper deed to the pur-

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chaser and the cancellation of the notice of attachment, letter A, after the payment of the amount of said bid. The debtor, owner of this estate, not having come forth to execute the proper bill of sale, the Court ordered that it should be officially executed on the —— day of ———, One Thousand ———, before the notary, Mr. N. P. In fulfillment of this order, Hon. ———, single, —— years of age, the Judge of First Instance of ———, by public instrument executed in the same city on the fifteenth day of October, One Thousand ———, before the notary, Mr. ———, sells the estate of this number, in the name of and by reason of the nonappearance of Mr. A. I., to the said Mr. M. N., for the consideration of Ten Thousand pesos, which amount was deposited in the Court before the execution of the instrument. The purchaser, Mr. M. N., records the acquisition of this estate by deed of purchase. All the above appears from the bill of sale, executed on ——— (as in the preceding forms).

Havana, —— of ———, 18—.

(*Full signature of the Register.*)

Fees: 12.50 pesos, number 7 of the Schedule.

X.—*Full record of a title of possession, including several estates situated in the same municipal district.*

ESTATE NUMBER ——.

MARGINAL NOTES.	Ordinal number.	
The other five estates included in the same instrument, from which the adjoining entry was taken, are recorded in the folios and volumes noted on the margin of entry number —, folio —, volume — of the Day Book. (*Date and surname.*)	1.	Rural.—Meadow land, called ———, situated in the district of ———, it is bounded by ———, etc., having an area of ——, equal to ——. It is not charged with any incumbrances. Its value is Two Hundred pesos. Mr. A., —— years of age, married, landowner, resident of ———, applied to the Court of ———, petitioning for the legalization of his possession of said estate, which he owned since ——— (*such a date*), upon which date he inherited it from his father, Mr. B., no written title to the property having been executed. The petition having been admitted, the owners of the contiguous estates were summoned, who did not testify to anything against the right of Mr. A., and Messrs. C. and D., neighbors and landowners of said town, testified as witnesses, and stated that Mr. A. did to their own knowledge possess said meadow land for ——— years. The proceedings having been communicated to the Department of Public Prosecution, and the latter having thought that, according to its opinion, all the formalities of the law had been observed, the decree of approval was issued on the ——— (*such a date*). In consequence thereof, having searched the Registry and not having found therein any entry contradicting the above, I record the possession of the estate in favor of Mr. A., without prejudice to a third party, who may have a better right to its ownership. In the proceedings there are included five other estates, which are recorded where the marginal note of this entry indicates. All the above appears from the proceedings had in the Court ——— of the ———, before the Clerk of the Court, Mr. H., which document has been filed in this Registry ——— (*such hour and day*), according to entry number ——, volume —— folio —— of the Day Book, the proceedings having been filed under number —— in package ——. And, being in conformity with the documents, to which I refer, I sign this entry in Cagayán, this —— day of ———, 18—.

(*Full signature of the Register.*)

Fees: 62 centavos, additional art. 6 of the Law.

XI.—*Entry of possession of an estate at the instance of a person having an unrecorded property right thereon.*

ESTATE NUMBER ——.

MARGINAL NOTES.	Ordinal number.	
	1.	Town.—House designated with number —— of ——— street, of this city, measuring —— meters in front, —— on each side, —— in the rear, which make —— square meters of superficial area; it is bounded on the right by house number ——, belonging to Mr. M., on its left by house number ——, of Mr. J., and in the rear by the ——— street. This house is encumbered with an unrecorded annuity (censo) of ——

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pesos of principal in favor of Mr. E., and with —— pesos of annual feudal fees, as appears from the preceding notice, letter A. On the —— day of ——— Mr. E. has made, through Mr. R., the notary of ———, a demand upon Mr. F., that the latter should, within thirty days, record in his name the ownership or possession of the said house; this not having been done and at the same time there not having been any opposition to the said demand, Mr. E. applied to the ——— Court of the ———, petitioning that the possession belonging to Mr. E. since ——— (*such a date*) be legalized, as upon the above said date he had acquired said estate from his mother, Mrs. R., without any written title. The petition having been admitted, the owners of the contiguous houses were summoned and did not testify to anything against the right of Mr. F., Messrs. G. and H., neighbors, landowners of the town, where the estate is situated, testified that the said interested party, to their own knowledge, had possession of this house for —— years.

From the certificate issued by the Municipality of ———, upon the application of Mr. E., signed and sealed by the Alcalde, Mr. N., by the syndic, Mr. J., and by the secretary, Mr. P., it may be seen that, according to the assessment list kept in that town, Mr. F. pays —— pesos of taxes on said estate, as its owner. After hearing the opinion of the Department of Public Prosecution, which stated that in its judgment all the formalities of the law have been complied with, the Court has issued the decree of approval on the ——— (*such a date*). In consequence whereof, having made a search in the Registry, and not having found in it any entry contradictory to the above stated, I record the possession of said estate in favor of Mr. F., without prejudice to a third party who may have a better right to the estate. Thus it is stated in the writ of requisition of the proceedings had in the ——— Court of ———, before the clerk, Mr. N., and in the above-mentioned certificate, which documents have been filed in this Registry on ——— (*day and the hour*), as per entry number ———, volume ——, of the Day Book, said originals having been filed with numbers —— (*whatever they may be*) in the proper package. And all being in conformity with the documents to which I refer, I record this entry and sign it at Mayagüez, this —— day of ———, 18—.

(*Full signature and fees.*)

XII.—*Record of a legacy consisting of an annuity (censo).*

ESTATE NUMBER ——.

MARGINAL NOTES. Ordinal number. 4. Town.—House number ——, the description of which is found in the preceding entry. It is encumbered with a transferable annuity (censo consignativo) of —— pesos of principal and —— pesos of interest imposed by Mr. A., in favor of Mr. B., according to the instrument executed on the —— of ——— (*such a date*), said annuity being made dependent upon the condition of the obligation of payment for —— masses each and every year in ——— Church, according to the record of this number —— on folio ——, volume ——. There is no evidence of other incumbrances. Mrs. F., the wife of Mr. E., of age, who acquired said annuity by gift from her brother, Mr. B., as per —— record of this number, folio ——, volume ——, died on the ——— (*such a date*), and by her will, executed on the —— of ——— before the Notary, Mr. D., she has bequeathed said annuity to Mr. H. (*of such a status and residence*) upon the following conditions (verbatim): "First, that in case Mrs. H. shall have issue she shall have no right to alienate said annuity during her life, in order that it may go over in its entirety to her children; and, second, that out of its income there shall be paid a life annuity of ——— to Mr. I. each and every year." In virtue whereof Mrs. H. records the acquisition of said annuity, as a legacy, upon the aforesaid conditions. All the above appears from the said will, and the schedule of Mrs. H.'s share of the estate issued in the judicial partition of the property left at the death of Mrs. E., approved by ——— through ——— on the —— day of ———, in the year of our Lord ———, which documents have been filed in this Registry on the —— day ———, at twelve o'clock in the morning, according to entry number ——, folio ——, volume —— of the Day Book. And it being in conformity with the documents to which I refer, I sign this entry in San Cristóbal, this —— day of ———, 18—.

(*Full signature and fees.*)

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XIII.—*Full record of an instrument constituting a voluntary mortgage upon several estates situated in the same municipal district.*

ESTATE NUMBER ——.

MARGINAL NOTES.	Ordinal number.	
The three other estates included in the same instrument, from which the adjoining record was taken, are recorded in the folios and volumes mentioned on the margin of entry number —, folio —, volume —, of the Day Book. (*Date and surname.*) The adjoining record number 2 is canceled by the record number —, folio — of this volume. (*Date and surname.*)	2.	Rural Plantation ———, the description appears in the preceding record, and is identical with the description made in the instrument now presented. Its value is forty thousand pesos. According to the records, this estate does not appear to be charged with any incumbrances, but in the instrument presented there is included the right of way in favor of ——— coffee plantation, belonging to Mr. J. B. y P. Mr. J. R. y O., resident of Madrid, married, of age, merchant, is the owner of this estate, according to the preceding record. Mr. J. G. y P., resident of this city, single, of age, (*trade or profession*), by virtue of a special power of attorney granted to him by the former constitutes a voluntary mortgage upon three other estates, as security for the sum of twenty thousand pesos, which sum Mr. V. D. y P. has loaned him through the medium of the said Mr. J. R. y O., delivering the money at the time of the execution of the instrument, in gold and silver coin, the notary before whom the instrument was acknowledged testifying to the payment of said money; and the distribution of the whole amount of this mortgage among the estates affected by said mortgage having been made, the estate of this number is liable for the sum of six thousand six hundred pesos, in the following manner: Five thousand pesos by reason of the loan, one thousand pesos as interest, and six hundred pesos for expenses and costs that would be incurred in case of a lawsuit, said estate being appraised at ———, waiving any new appraisement, or action with this object in view. Said mortgage was entered into upon the following conditions, the only ones which limit in any way the rights of the owner: "First, the loan is made for a term of four years, running from the date of the execution of the instrument." "Third, Mr. J. R. y O. shall pay to V. D. y P. on the first day of ——— of each and every one of the years 18—, 18—, 18—, and 18—, the sum of two thousand pesos as interest, and shall repay the principal on the —— day of ———, 18—." Mr. V. D. y P. records his mortgage right upon this estate and upon three other estates, recorded in the places indicated in the marginal note. All the above appears in the said instrument of loan secured by mortgage, the power of attorney referred to being incorporated in said instrument, executed in this city on the —— day of ———, 18—, before the notary, Mr. L. L., the first copy of which has been presented in this Registry at —— a. m. in the morning on the —— day of ———, 18—, according to entry of presentation number ——, folio ——, volume —— of the Day Book. All the above being in conformity with the aforesaid document, I sign this in Cavite this —— day of ———, 18—. (*Full signature of the Register.*)

Fees: Ten pesos, number 7 of the Schedule.

XIV.—*Brief record of a mortgage relating to another estate included in the same instrument.*

ESTATE NUMBER ——.

MARGINAL NOTES.	Ordinal number.	
(The same as the preceding form.)	2.	Town.—House, the description of which ———. It is not charged with any incumbrances. Mr. J. R. O., resident of Madrid, married, of age, merchant, acquired this estate, as may be seen in the preceding record, being represented by Mr. J. G. P., a resident of this town, single, of age (*trade or profession*), constitutes by the instrument executed in this city on the —— day of ———, before the notary, Mr. L. L., a voluntary mortgage in favor of Mr. V. D. y P. upon this estate as security of the loan made by him upon the conditions stated in the full record —— of estate number ——, folio ——, volume —— of this Registry, the estate of this number being liable for the sum of four thousand pesos of principal, eight hundred pesos for interest, and four hundred pesos more for costs and ex-

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penses in case of litigation, said estate being appraised at the sum of ———, waiving appraisement or action with this object in view. Mr. V. D. y P. records his mortgage right upon this estate and upon three other estates recorded according to the indications in the marginal note.

(*Date and surname of the Register.*)

Fees: 9 pesos, number 7 of the Schedule.

XV.—*Record of transfer of mortgage rights.*

ESTATE NUMBER ——.

MARGINAL NOTES. Ordinal number. Town.—House number ——, the description of which is to be found in the preceding record. According to the second record of this number it appears encumbered with a mortgage. Mr. A., —— years of age, has acquired mortgage rights against Mr. B., upon said house, amounting to —— pesos of principal, the maturity of which, interest, and other particulars are stated in the said second entry, and he does cede and transfer it to Mr. S., —— years of age, for the consideration of —— pesos, which was paid in cash in the presence of the notary, who testifies to the fact of said payment having been made. The debtor was notified of this transfer and was present at its execution, and the contract was drafted with the following conditions which affect the right of the assignee:——— (*verbatim*). By virtue thereof Mr. S. records the said mortgage right upon the above-mentioned conditions. All the above appears from the instrument of transfer of mortgage rights, executed on the ——— (*such a date*), before the notary, Mr. P., the first copy of which has been presented in this Registry on the —— day of ——— at —— o'clock, as per entry number ——, folio ——, volume —— of the Day Book. The above being in conformity with the instrument referred to, I make the present record and sign it in Ponce this —— day of ———, 18—.

(*Full signature and fees.*)

XVI.—*Record of real property in favor of the husband.*

MARGINAL NOTES. Ordinal number. Rural.—Sugar estate ———, the description of which, and encumbrances appear in record folio —— of this volume. Mr. A., a resident of ———, widower, —— years of age, acquired said estate, as it appears in the record, and having a daughter named Miss C., single, —— years of age, who engaged herself on (*such a date*) to marry Mr. E., a resident of ———, single (*age and occupation*), decided to constitute an appraised dowry of —— pesos in favor of his said daughter. Amongst the property which constituted the dowry there is the above-mentioned estate, appraised by mutual consent at —— pesos, and delivered to Mr. E., the notary certifying to it, with an appraisement for the purposes of a sale, but with the following conditions (*here there shall be stated the conditions that may have been agreed to in conformity with Art. 193 of the Regulations*). Mr. E. records the ownership of this estate with the above-mentioned conditions, said estate being charged with a legal mortgage in favor of the said dowry for ———, at which sum it was appraised. All the above appears in the dowry instrument executed in ———, on the —— day of ———, (*such a date*), before the notary, Mr. F., the first copy of which was presented at —— o'clock in the ———, on the —— day of ———, according to entry number ——, folio ——, volume —— of the Day Book. And being in conformity with the document referred to, I issue these presents and sign them, in Bejucal, this —— day of ———, 18—.

XVII.—*Another record of an appraised dowry.*

ESTATE NUMBER ——.

MARGINAL NOTES. Ordinal number. 2. Rural.—Cattle ranch, the description of which in the first record is in conformity with that made in the instrument now presented. There is no evidence of any incumbrances upon it, etc. Miss A., —— years of age, spinster, a resident of ———, acquired this estate from her father, Mr. D., according to the above said first record, and, having entered into marriage on the ——— (*the date*) with Mr. C.,

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of —— years of age, single, a merchant, and resident of ———, delivers said estate to him before the notary, Mr. N., as appraised dowry, for the purpose of which the value of said estate, by mutual agreement between the spouses, has been appraised at —— pesos. Mr. C. records the ownership of this estate, the acquisition of which was by virtue of appraised dowry of his wife, Miss A., according to the laws, and without any special conditions. In compliance with the mortgage law this estate is mortgaged for all its value in favor of the said Miss A. The above appears from the instrument, constitution and delivery of the appraised dowry made by Miss A. and Mr. C. on the ——— (*date*), the first copy of which has been presented, etc. (*Ends like the other entries.*)

XVIII.—*Record of a mortgage to secure an unappraised dowry, and consisting of personal property.*

ESTATE NUMBER ——.

MARGINAL NOTES.	Ordinal number.	
The other two estates included in the instrument, from which this record has been taken, are recorded on folio number — volume — of this Municipality, record fifth, and folio — of volume — of the Municipality of ——, record third. (*Date and surname.*)	4.	Rural.—Farm, the description of which, etc. There is no evidence of this estate being encumbered, etc. Mr. A., —— years of age, etc., acquired said farm by purchase from Mr. B., as it appears by the third record of this number. The said Mr. A. has agreed to marry (or married) on the —— day of ——— Miss P., —— years of age, a spinster, resident of ———; and Mr. G., a resident of ———, the father of Miss P., gives her, as unappraised dowry, and as such has delivered to Mr. A., the notary, Mr. N., certifying to the same, the following dowry, besides several estates, property rights, and personal property, consisting of jewelry to the value of —— pesos; furniture, cattle, and clothing to the value of —— pesos; and lastly, —— pesos in cash. By virtue of said dowry Mr. A. binds himself to restore the same property which has been given to him as unappraised dowry in the condition it may be on the dissolution of the marriage, and failing to do so, to be liable for the amount of the value at which it was appraised in the dowry instrument, as that was the only object of appraising the above-mentioned property; and in consequence of the demand of Mr. G. upon him to secure the restitution of the dowry by means of a legal mortgage, Mr. A. mortgages the estate of this number and two other estates in favor of Miss P., to secure the total amount of —— pesos, at which the above said personal property has been appraised, and in order to meet the possible case of the failure to return some of the above-mentioned dowry property, distributing his liability among the above said three estates, so that the estate of this number is liable in the amount of —— pesos, being appraised at —— pesos, with the waiver of any new appraisal or action having this object in view. Mr. G. accepts the said mortgage, considering it sufficient to cover said liability, and agrees to the distribution of said liabilty as made. Miss P. records her mortgage right upon this estate in the terms stated, and upon two other estates recorded, as appears by the marginal entry. All of which appears. (*Ends as the record of a voluntary mortgage.*)

XIX.—*Record of a mortgage upon real property to be set apart.*

ESTATE NUMBER ——.

MARGINAL NOTES.	Ordinal number.	
The other estate, included in the instrument from which this record was taken, had been recorded on folio —, of volume — of this Municipality, third entry. (*Date and surname.*)	3.	Rural.—Plantation, the description of which appears in the first record, identical with the description made in the instrument now presented, differing only in regard to the boundaries, in the following manner: "On the North by ———, on the East by ———, on the South by ———, and on the West by ———." There is no evidence of its being burdened with any incumbrances. Mrs. A., —— years of age, married, residing in ———, acquired said farm from her father, Mr. I., as stated in the first record of this number. Said Mrs. A. was married for the first time to Mr. B., who died (*such a day*), and two children of that union are living, Mr. D., —— years of age, and Miss E., —— years of age; Mr. B. willed to Miss A. one-fifth

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of his property, by a testament executed in ——— on the —— day of ———, 19—, before a notary; the following property was awarded to her in payment thereof: The house, recorded on folio ——, number ——, of volume —— of the Municipality of ———, record number five, to the value of —— pesos; jewelry to the value of —— pesos; and —— pesos in coin; which four items make the sum of —— (*so much*), as appears by distribution, approved by the Judge of ———, on the —— day of ———, through ———, the certified copy of which award was issued by the notary ———, Mr. R., on the —— day of ———, in ——— (*such a town*). And, as Mrs. A. has on the ——— (*such a date*) contracted a second marriage with Mr. G., the above-mentioned property resulting from the said one-fifth has been set apart for the children of the first husband. Mr. E., as guardian of said children, demanded that said property be secured by a proper mortgage. In due course of the proceedings, the Court of ——— issued an order approving the mortgage offered by Mrs. A., consisting of the only real property she was possessed of, and said mortgage being insufficient, she is obliged to amplify it with the first real property she may acquire, said Court ordering the execution of the proper instrument. According to said instrument, Mrs. A. mortgages the estate of this number for ———, the amount of its appraisal, which is made, waiving any new appraisal or action with this object in view, and upon the condition that upon the acquisition of more real property, she shall mortgage enough of it, so as to complete the sum of ———, the value of the property to be set apart. The children, Mr. D. and Miss E., record their mortgage right upon this estate and upon another estate recorded as indicated in the marginal note, and upon the above-mentioned condition. All of which appears, etc. (*It ends as all the other entries.*)

XX.—*Record of a legal mortgage in favor of the state.*

ESTATE NUMBER ——.

MARGINAL NOTES.	Ordinal number.	
	2.	Town.—House, the description of which, etc. ———. There is no evidence that this house is charged with any incumbrances. Mr. A., —— years of age, acquired said house by inheritance from his father, Mr. P., as per the first record of this number. Mr. D., a resident of ———, having been appointed Superintendent of the Lotteries in the town of ———, and having offered this house as security, amounting to ———, the proper proceedings have been begun, which were approved by ———, of ———, the house of this number having been deemed sufficient to cover the above said liability. By virtue of which Mr. A., as bondsman of Mr. D., mortgages the house of this number as security to the State for the amount of ——— for the liabilities which Mr. D. may incur in the office of said Superintendent of Lotteries, the estate being appraised at ———, waiving any new appraisal or action with this object in view. This bond ——— (*the special conditions upon which said bond was constituted have to be inserted here, and, in case there were no special conditions, this fact must be stated here*). The State records its right to the legal mortgage, as to the result of the above-mentioned office with the aforesaid conditions (*or without any conditions*). The above appears from the instrument constituting the mortgage security, executed by Mr. A. on the —— day, before the notary, Mr. E., the first copy of which was filed on the ———, etc. (*It ends as all the other entries.*)

XXI.—*Cautionary notice of a legacy of twenty-five thousand pesos.*

ESTATE NUMBER ——.

MARGINAL NOTES.	Ordinal number.	
	Letter —.	Rural.—Plantation, the situation, superficial area, boundaries, and other particulars are to be found in record ——, of this number on folio ——, volume ——, and the incumbrances thereon appear from the record of the same number, on folio ——, volume ——, of this Municipality. Mr. A., resident of ———, and the owner of this estate, as appears from record ——, folio ——, volume ——, died in ———, the —— day of ——— of the present year, leaving a legacy of 25,000 pesos to his nephew, Mr. C., single, 15 years of age, residing in ———, and constituting his two sons, Mr. E. and Mr. F., both of age, his universal heirs. Said legacy having been accepted by the latter, although the partition of the property has

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not been made up to this date, the legatee, Mr. C., applied to the ——— Court, petitioning that a cautionary notice be ordered to be made in his favor upon the above-mentioned plantation; the Court having allowed said claim, Mr. C. gives public notice as to his right as legatee, and by virtue thereof he has constituted this cautionary notice upon the above said plantation for the term of the one hundred and eighty days prescribed by the law. All the above stated appears from the mandate of the ———, issued on ——— (*such a date*), before Mr. G., presented in this the Registry on the —— day of ———, at —— o'clock in the morning, as per entry number ——, folio ——, volume —— of the Day Book, and which order has been filed under number ——— of the proper package. And it being in conformity, etc.

(*Date, full signature, and fees.*)

XXII.—*Cautionary notice of an instrument of cancellation, the record of which is suspended.*

ESTATE NUMBER ——.

MARGINAL NOTES.	Ordinal number.	
The cautionary notice of this entry has lapsed, sixty days having passed since date thereof without remedying the defect of the instrument, the record of which was requested. No fees. (*Date and surname.*)	Letter —.	Record number ——, folio ——, of volume ——, by which Mr. D. constituted a mortgage for ——— in favor of Mr. B., is shown to be canceled by an instrument executed by the above said interested parties on the —— day of ———, of ———, before the notary, Mr. C., the first copy of which has been presented on the —— day ———, of ———, according to entry number ——, volume —— of the Day Book. But as there appeared therein ——— (*here all the defects capable of correction therein contained shall be stated*), I return it for the correction of these defects within sixty days, and meanwhile I suspend the record of cancellation, in its place entering this cautionary notice. And it being in conformity with the said instrument, I sign this entry in Aguadilla, this —— day of ———, 18—.

(*Full signature and fees.*)

XXIII.—*Cautionary notice of a voluntary mortgage.*

ESTATE NUMBER ——.

MARGINAL NOTES.	Ordinal number.	
	Letter A.	Rural.—Coffee plantation, the description of which appears in the preceding entry. There is no evidence that it is charged with any incumbrances. Mr. A., —— years of age, acquired said estate by purchase from Mr. B., as appears from the above entry, and he mortgages it to Mr. C., —— years of age, as security for a loan of —— pesos upon the following conditions ——— (*verbatim*). The above appears from the instrument of loan secured by mortgage executed by Mr. A. and Mr. C. on —— day of ———, before the notary, Mr. E., the first copy of which has been presented in this Registry on ———, at —— o'clock in the morning, according to entry number —— of the —— volume of the Day Book. And all the above being in conformity with the instrument to which I refer, but having found in said instrument a defect capable of correction ——— (*here the particulars of the defects shall be stated*), I do suspend the record and return the instrument, in order that the interested parties may correct the above-mentioned defect within sixty days' time, meanwhile entering this cautionary notice. And it being in conformity, etc.

(*Date, signature, and fees.*)

XXIV.—*Conversion of the preceding cautionary notice into a record.*

3.	The preceding cautionary notice, letter A, showing that Mr. C. acquires a mortgage right of ——— upon the estate of this number, is hereby converted into a definite record, as the defect which caused the suspension of the record has been corrected by means of a new instrument executed by the same interested parties before the proper notary on the —— day of ———, in which ——— (*here shall be stated the manner in which the*

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defect was corrected). The first copy of said instrument, together with the copy of the former instrument, of which the cautionary notice was made, has been presented in this Registry on the —— day of ——— of this year, at —— o'clock in the ———, according to entry number ——, folio ——, volume —— of the Day Book. And it being in conformity, etc.

(*Full signature and fees.*)

XXV.—*Cautionary notice of a property right in consequence of the failure to record the realty which is affected thereby.*

ESTATE NUMBER ——.

MARGINAL NOTES. ——

Ordinal number. Letter —.

Town.—House number —— of ——— Street, in this town. It is bounded on the right by house number ——; in the rear by house number ——, on ——— Street; and on the left by ———, Street. Its superficial area is —— square meters. Mr. E., a resident of ———, is the owner of an annuity (censo) of —— pesos, principal and of a feudal fee of —— pesos imposed upon said house, according to the public instrument executed on the —— day of ——— before the notary, Mr. M., the first copy of which he has presented in this Registry, in order that a cautionary notice might be made, because it was ascertained that neither said annuity (censo) nor the estate itself is recorded in favor of its present owner, Mr. E., nor in favor of any other person. In consequence of its not being recorded in favor of anyone, I make a cautionary notice because of the above-stated defect, which should be corrected in sixty days. All the above appears in the aforesaid first copy presented in this Registry at —— o'clock in the —— of —— day of ———, according to entry number ——, folio ——, volume —— of the Day Book. And being in conformity with the instrument to which I refer, I sign this in Cadiz, this —— day of ———, 19—.

(*Signature in full and fees.*)

XXVI.—*Cancellation of a cautionary notice of an agricultural loan, made in consequence of a written request of the interested parties.*

ESTATE NUMBER ——.

MARGINAL NOTES. ——

Ordinal number. Letter —.

Cautionary notice of the Agricultural loan, letter ——, mentioned in folio ——, volume —— of this Municipality, is hereby canceled in consequence of the signed petition made on —— day of ——— by Mrs. A., in whose favor it was constituted, and by Mr. B., who has constituted it, in consequence whereof the estate to which it refers is freed from said charge. Both the interested parties have been identified before me; and I do hereby certify to knowing them, and that there is no evidence upon the record that either of them has lost his or her respective rights stated in the notice which is canceled. Said petition was presented on the —— day of ———, at —— o'clock in the morning, as appears from entry number ——, folio ——, volume —— of the Day Book, and is filed under number —— in the proper package. And being in conformity, etc.

(*Date, full signature, and fees.*)

XXVII.—*Cancellation of a record of a voluntary mortgage upon several estates situated in the same municipal district.*

ESTATE NUMBER ——.

MARGINAL NOTES. ——

The same as Form number 5.

Ordinal number. 8.

The preceding record of a mortgage right is hereby wholly canceled, as the debtor, Mr. J. R. O., has paid to the creditor, Mr. J. V. D., the sum of —— pesos, together with the interest past due, the receipt of which has been certified to by the notary, and the said creditor having consented to this cancellation. This appears in the instrument executed on the —— day of ———, before the notary, Mr. L. L., the first copy of which instrument has been presented in this Registry, at —— o'clock in the morning on the —— day of the present month, according to presentation entry number ——, folio ——, volume —— of the Day Book, the

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ordinary copy of which instrument having been filed under number —— in the proper package. And being in conformity, etc.

(*Date, full signature, and fees.*)

REMARKS.

The cancellation made according to the preceding form shall be made only in the Registry corresponding to the estate in which there appears the full record of mortgages. In regard to all other estates, there shall be only stated in the margin of the proper mortgage records a memorandum in the following terms: "The adjoining record number —— is canceled in consequence of the payment by the debtor, Mr. J. R. O., to the creditor, Mr. J. V. D., of the principal loaned, together with the interest, according to the instrument executed on the —— day of ———, before the notary, Mr. L. L., as appears from record number 3, estate number ——, folio ——, volume —— of the Municipality of ———."

(*Date and surname.*)

XXVIII.—*Certificate in connection with entries of any kind pertaining to a given property.*

I, N. N., Register of ———, do hereby certify that, upon the application of Mr. A, demanding the issue of a certificate of all the entries of any kind existing in this Registry for thirty years last past, pertaining to the house situated on ——— street, number ——, block number ——, and having searched the proper books, it appears:

First. That the said house is the one designated under the same number ——— (*or, under such a number*), bounded in the year one thousand eight hundred and fifty-nine on the right ——— (*here the boundaries*), and was sold by its owner, Mr. B., to Mr. C., for —— pesos, which was paid in cash, with an obligation to recognize and reserve in his favor an annuity (censo) of (*so much of the principal and so much of annual payments*), according to the public instrument executed on ——— (*such a date*), which was recorded in this Registry on the sixth of March, of said year, one thousand eight hundred and fifty-nine, according to what appears in volume ——, folio ——, of the old "Receptoría."

Second. That said Mr. C. willed the above said house to Mr. E. in his testament, executed in ——— on the sixth of January, one thousand eight hundred and sixty, which was recorded in the fourth volume, folio ——, of the old "Receptoría."

Third. That Mr. E. mortgaged said house to Mr. G. as security for a loan of —— pesos for ten years at five per cent interest, according to the public instrument executed in the said city of ——— on the ninth day of November, one thousand eight hundred and sixty-four, which was recorded in the ——— book, folio ——, etc. (*on such date*), which record has not been canceled up to date. (*In this manner all the other records that may appear shall be stated ending thus:*) And there being no other entry in force either in the Registry or in the Day Book, I sign these presents in ———.

(*Date and signature.*)

Fees for the search in the old "Receptoría," ———.

Do. For this certificate, ———.

XXIX.—*Verbatim certification of entries of all kinds by virtue of a judicial mandate.*

I, N. N., etc., ——— certify that, in compliance with the preceding mandate, I have examined all the entries pertaining to the books of the old and the new Registry, and it appears:

First. Folio —— of the ——— book of the old Registry contains the following entry: (*It is copied.*)

Second. Folio —— of the ——— book, of the Day Book, entry number, ——.

Third. On the margin of the preceding entry there is the following note: ——.

Fourth. Folio —— of the ——— book of the Register of Property of the town of ———, estate number ——, first record ———.

The four entries hereinbefore inserted are the verbatim copies of those found on the folios and books, and under the numbers above mentioned, to which I refer. And, there being no other pertaining to said estate, that this may appear, I sign these presents in ———.

(*Date and signature.*)

Certification fees ———.

Do. For the search in the old Registry, ———.

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XXX.—*Certification of mortgage records recorded against a given person.*

I, N. N., etc., ———, certify that upon the application of Mr. A., asking that a certification be issued pertaining to all the mortgages created by Mr. C. during the ten years last past upon the estates which he possesses in ———, and upon examination of the books of the Registry and of the Day Book, it appears:

First. That, being the owner of the sugar plantation called "———," situated in the district of ———, subdistrict of ———, measuring (*such a superficial area*), designated in the Registry of Property with number ——, folio ——, volume ——, according to entry number ——, the boundaries of which are ———, has mortgaged it, together with other property, for the sum of ———, it being appraised at ———, for the security of the dowry, appraised at —— pesos, which his wife, E., brought in marriage, according to the public instrument executed in ——— on the sixth day of ——— of the year ———, which said mortgage appears made on ——— (*such a day*), record number ——, folio ——, volume ——.

Second. That said Mr. C., being also the owner of a coffee plantation situated in the district of ———, measuring (*so many*) "cuerdas," designated in the Registry of Property with number ——, on folio ——, volume ——, according to record number, and the boundaries of which are ———, has mortgaged it for —— pesos, it being appraised at —— pesos, together with other property belonging to Mr. G., as security for the loan of —— pesos, made to the said G. by I —— for three years at six per cent interest, according to the public instrument executed in this city on the ——— (*such a day*), which mortgage appears made on ——— (*such a day*), record number ——, folio ——, volume ——.

Third. That, finally, amongst the entries of the Day Book, which were not as yet recorded, there appears on folio —— of the volume —— an entry which (verbatim) reads as follows: "Number —— (*here the entry of presentation*)."

And, the above said entries not having been canceled, there being no other mortgages pending against said C. in the proper Registry or in the Day Book, I issue this certificate in ———.

(*Date and signature.*)

Fees for the search in the old "Receptoría," ———.

Do. For this certificate, ———.

XXXI.—*Certificate that there are no property rights of a given kind charged on an estate.*

I, N. N., etc., ———, certify that, upon the application of Mr. A. for a verbatim certification of the annuities (*censos*) and mortgages charged upon the house which he owns in this city, ——— street, number ——, or, in case there should be no charges of such a character upon it, if this should appear from the time of the beginning of the now abolished "Receptoría," I have examined all the books of the same, and there does not appear therefrom that house number —— of ——— street, designated under number —— in the Registry of Property, volume ——, folio ——, the boundaries of which are ———, and the ownership of which is recorded in favor of the above said A., by record number ——, is charged neither with annuities (*censos*), nor with mortgages in force from the beginning of the old Registry, neither has there been presented in regard to this house any instrument pertaining to such charges pending its record. Thus it appears from the books of the Registry and from the Day Book, and that it may so appear I issue these presents in ———.

(*Date and signature.*)

Fees for the search in the old "Receptoría," ———.

Do. For this certificate, ———.

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Registry of Property of ———.

XXXII.—*Index of persons.*

Name of the person in whose favor or against whom the ownership or a property right of an estate is recorded or entered.	Volume and folio of the records or entries in which said person has an interest.	Volume and folio where cancellations appear.
Abad (Mr. José)	Volume II, folio 64	Volume II, folio 68.
Belabal (Mr. Juan)	Volume IV, folio 57; Volume VI, folio 19	Volume IV, folio 57; Volume VI, folio 61.
Becerril (Mr. Pedro)	Volume V, folio 14; Volume VII, folio 95; Volume X, folio 20	Volume V, folio 14; Volume VII, folio 64.

Registry of Property of ———. Municipal district of ———.

XXXIII.—*Index of estates.*

SECTION OF TOWN ESTATES.

Square or street.	Number.	Name of the subdistrict or town.	Number of the estate in the Registry.	Book and folio in which it appears recorded.	The kind or class of ownership, or property right, or of the cautionary notice.
Armas	2	Arroyo Naranjo	34	Volume I, folio 27	Ownership.
Cruz	14	Calvario	52	Volume IV, folio 54	Mortgage.
Comercio	10 new and 17 old.	Puentes Grandes	13	Volume II, folio 89	Notice of a legacy, attachment, etc.

Registry of Property of ———. Municipal district of ———.

XXXIV.—*Index of estates.*

SECTION OF RURAL ESTATES.

Name of the estate or of the farm, or district.	Town, subdistrict, quarter, or jurisdiction.	Boundaries.		Area.		Agricultural use for which it is intended.	Number of the estate in the registry.	Book and folio in which the entry appears.	The kind or class of ownership, right, or cautionary notice.
		East.	West.	Hectares.	Ares.				
Carmelita	Mameyes	The sea	Road of Rio Piedras	20	0.6	Sugar plantation	2	Volume IV, folio 35	Ownership.
Pitajaya	do	Mr. Antonio Veve	Arroyo Grande	25	0.6	Coffee plantation	15	Volume X, folio 30	Servitude.
Concepcion	Medio Mundo	Mr. Juan Zalduondo	do	40	0.1	Sugar plantation	40	Volume VIII, folio 95	Attachment.

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XLI.—*Judicial proceedings for recording possession in the registry of property.*

PETITION REQUESTING AN INVESTIGATION.—To the Court (of First Instance, or Municipal Court, as the case may be). Mr. A., ———, a resident of ———, as shown by his personal "cedula" (of *such a* class), which was issued to him under number ———, formally appears and in conformity with the laws, says: I am the owner of a piece of land of ——— ares and ——— centiares of superficial area, situated in this Municipal district, sub-district of ———, of *such a* kind (it must be specified), which is bounded on the North by ———; on the East by ———; on the South by ———; and on the West by ———, and on which there is no encumbrance (or has *such* encumbrances). I had this estate by inheritance from my father who in his turn had inherited it from his father, but, on account of the small value of same, and there being no notaries in the town, (or for some other reason), I have no written title to prove my ownership (or it is difficult for me to find it as I do not know in which archives or book it may be) in spite of the fact that I have already been ——— years in possession of said estate, and, in order to remedy the absence of said title and to enable me to record my right in the Registry of Property, I request that proceedings be begun as authorized by Articles 390 and the following of the Mortgage Law, and therefore: I respectfully petition the Court to receive the declarations of witnesses submitted by me upon the fact of said possession, ordering it to take place with the hearing of the Fiscal (Representative of the Department of Public Prosecution) and summoning the adjoining owners whose names are: ——— ———, and to approve said proceedings in case they shall be found according to law, and ordering that the proceedings be delivered to me for record in the Registry of Property, since my request is according to justice.

Furthermore, in compliance with the provisions of Art. 391 of the Mortgage Law, I accompany herewith the certificate issued by the Mayor of ——— (of the Municipal district where the property is situated, or from the official empowered to collect in said town the territorial taxes), according to the assessment roll (or according to other official data), showing that I pay such an amount for taxes as owner of the estate hereinbefore described, and I also request the Court to admit it and to order it to be attached to the proceedings for its due legal effects. (*Date and signature.*)

(*If it is desired to record a property right, the investigation shall be asked for and made, giving a hearing to the owner or to the other participants in the ownership of the estate charged with that right. When no quarterly tax has been paid, on account of the realty or property right having been recently acquired, or because the petitioner is the heir of the former owner, the absence of the tax certificate shall be remedied in the manner established by rule 4 of Art. 391 of the Mortgage Law.*)

Partition or presentation proceedings, as the case may be.

RULING: In consequence of the foregoing petition with the certificate thereto attached having been presented, the investigation proceedings with witnesses are hereby ordered with citation of the Fiscal, (Representative of the Department of Public Prosecution) and of Mr. ——— and Mr. ——— (or of the owner or the participants in the ownership if a property right is involved), as solicited in the said petition. (*Date and signature.*)

Notices and citations in the ordinary form.

DEPOSITION OF THE WITNESS, N. N.—In ——— on the —— day of ———, before Mr. ———, there appeared the witness, N. N., —— years of age, landowner and resident of *such a* locality (of the town or district where the property is situated), which ownership and residence he proves by his personal "cedula" (of *such a* class and number), which he shows (or by *such* documents), to whom said Judge has administered the oath, which he took in due form, promising to tell the truth of what he knows and may be asked, and being asked for his general description in conformity with the law, he said: To be and to be named as above stated, that he is neither an employé, a friend, an enemy, or a relation of the petitioner, and has no interest whatsoever, either direct or indirect, in this matter, nor in any other similar matter, and that he has never been convicted of perjury.

Being asked: Whether it is true that Mr. A. B. did possess and possesses in his own name the estate *or such property rights* (they shall be described), said: That the contents of the question are true and that he is certain of it, because

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he has constantly observed that Mr. A. B. has exercised the rights and obligations of a rightful owner in regard to said estate.

Being asked: For how long a time has Mr. A. B. been in possession of the estate mentioned in the preceding question, he said: During *so many* years.

The preceding deposition having been read to him, he affirmed it and ratified it, and he signs it together with the Judge and with me, the Secretary (or Clerk of the Court, *Actuario*), to all of which I certify. *Signatures.*

(The form of the remaining depositions shall be similar.)

RULING. To the Fiscal (Representative of the Department of Public Prosecution) in order that he may state what he may wish and deem proper. *Date and signature.*

Notices and formality of delivering the record of proceedings.

OPINION OF THE FISCAL REPRESENTATIVE (Representative of the Department of Public Prosecution).—The Fiscal says: That he has examined the record of these proceedings, and that, in view of the fact that the witnesses examined comply with the conditions required by rule 2 of Art. 391 of the Mortgage Law, and that the other legal formalities have been complied with, he has nothing to object against said investigation, and requests the Court to approve it (or he finds *such a* defect and asks that it should be corrected.) *Date and signature.*

Formalities for obtaining again the record of proceedings and delivering it to the Judge for a final decree.

FINAL DECREE.—In *such a* locality, on *such a* date: In view of these proceedings petitioned for by Mr. A. B.

Whereas, Mr. A. B. presented in this Court a petition, dated ——— ———, stating that he was the owner of *such an* estate or property right (describe it), that he obtained it by inheritance from his father, Mr. C. B., who in his turn inherited it from his father, that he had possession of it for more than ——— years, but that for *such a* reason (which is alleged) he had not a written title of possession, and, therefore, in order to be enabled to record his right in the Registry of Property, he did petition for the due investigation proceedings authorized by Art. 390 of the Mortgage Law (accompanying *such* documents), and requested that the proceedings of investigation be granted with citation of and a hearing by the Fiscal (Representative of the Department of Public Prosecution), as well as with citation of the owners of the adjoining estates, and that said proceedings be finally approved in so far as the law permits.

Whereas, during the investigation (*so many*) witnesses, neighbors, owners of ———, have testified that it is true that Mr. A. B. did possess in his own name and as an owner for a period of more than ——— years *such an* estate, these facts being known to them from their own knowledge.

Whereas, the record of proceedings was delivered to the Fiscal (Representative of the Department of Public Prosecution) and he has decided that all legal formalities have been complied with and that it was in order that the investigation proceedings should be approved (or has noticed *such a* defect and requested its correction, which was accordingly done).

Whereas, according to the provisions of Art. 390 of the Mortgage Law, the owner having no written title of possession, may record his right upon previously proving his possession before the Judge of First Instance of the locality where the property is situated, with a hearing by the Fiscal (Representative of the Department of Public Prosecution) and citation of the owners of the adjoining estates, in case it was desired to record the full ownership of an estate, and with citation of the owner or of the other co-participants in the ownership, if it was desired to record a property right, and that if the estates are located in a town or district where there is no Court of First Instance, said investigation proceedings may be held before the proper Municipal Judge with a hearing by the Fiscal Representative (Public Prosecutor) whose intervention shall be limited to seeing that the formalities of the law are observed in the proceedings.

Whereas, it has been proved by these proceedings with witnesses that Mr. A. B. does possess in his own name and has possessed for more than ——— years the estate (or property right) ——— which he acquired from ——— by right of ———, and that the witnesses who have testified in these proceedings are all residents and land owners in the town or district of ——— where the estate is situated, fulfilling, therefore, the requisites demanded by Art. 391 of the same Mortgage Law, and,

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Whereas, all the other legal requisites have been complied with in the proceedings, and there was no opposition on the part of any person, and that the Fiscal (Representative of the Department of Public Prosecution) has decided that it is in order to approve said proceedings,

In view of the above mentioned articles and also of Articles 392 and 393 of the Mortgage Law and Articles 436 to 441 of the Regulations as to its execution.

The Judge, before me, the Secretary, (or Clerk of the Court, *Actuario*), says: That he had to approve and did approve the investigation submitted, ordering that in virtue of the same there shall be recorded in the Registry of Property of ——— the record petitioned for by Mr. A. B., of possession of the estate ——— *without prejudice to a third person who may have a better right*, for which purpose the original record of proceedings shall be delivered to him in order that he may present it in said Registry. So it was provided for, ordered, and signed by ———, to all of which I certify. Before me, ———, Secretary, (or Clerk of the Court, *Actuario*): *Signature.*

Notice and formality of delivery of the record of proceedings to the interested party.

NOTE.—When there is an opposition made by anybody, who considers that he has a right to the property, the record of which is petitioned for, when it is shown that the claim has been presented to the proper Court and that the cautionary notice has been entered in the Registry, the investigation proceedings for possession shall be suspended, and so stated.

Statement of the articles of the mortgage law and of these regulations which agree more or less directly with each other.

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